LAW REFORM COMMISSION OF BRITISH COLUMBIA

REPORT ON

THE UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT

LRC 122

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The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

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To The Honourable Colin Gabelmann
Attorney General Of The Province Of British Columbia:

The Law Reform Commission of British Columbia has the honour to present the following:

REPORT ON

THE UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT

This Report examines the difficulties in enforcing judgments between Canadian provinces and recommends the adoption of the *Uniform Enforcement of Canadian Judgments Act*. This Act was prepared by the Uniform Law Conference of Canada in response to a request made by the Canadian Attorneys General and Ministers of Justice for uniform legislation which embodies a full faith and credit approach to the enforcement of Canadian judgments.

British Columbia has been a catalyst throughout the national processes which have led to the creation of the Uniform Act. We recommend that the province assume leadership in its implementation through an early commitment to the adoption of the Act.

CHAPTER I INTRODUCTION

A. Full Faith and Credit

Getting a judgment for money is not the same thing as having money in your pocket. Frequently a judgment creditor must take active steps against the debtor's property to satisfy the judgment. This process can be expensive and frustrating enough, but the creditor's difficulties may be increased substantially if the debtor's property is in a different province.

The reason is that a judgment, without more, has no force and effect in a neighbouring province. Additional steps are necessary to invoke the assistance of the local court to satisfy the judgment by seizing and selling the debtor's property or through another creditor's remedy. The creditor invokes the assistance of the local court by starting a legal proceeding such as an action on the judgment or an application under reciprocal enforcement legislation. In such a proceeding, the debtor can raise a variety of defences to stall or block enforcement.

These defenses are usually highly technical and turn on questions of jurisdiction or some defect in the proceeding before the original court. They reflect principles that evolved to govern the enforceability of judgments between nations rather than the units of a federation. Their application in Canada is highly inappropriate. Only recently have the courts modified them so that a more relaxed standard applies to judgments from within Canada. Even so, enforcing a judgment from one province in another can be a hazardous exercise.

These concerns led the Law Reform Commission of British Columbia to examine the current law governing the enforcement of judgments between Canadian provinces. A Working Paper, issued in 1989, tentatively concluded that aspects of it required revision.[1] The Commission proposed that an out-of-province Canadian judgment for money should become enforceable by simply filing it with the Supreme Court of British Columbia. All the remedies available to those seeking to enforce local judgments would be available.

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1. Law Reform Commission of British Columbia, *The Enforcement of Judgments Between Canadian Provinces* (No. 64), hereafter referred to as "the Working Paper."

This approach differs substantially from that reflected in current reciprocal enforcement of judgments legislation which compels the judgment creditor to apply formally to the court for registration and allows a judgment debtor to contest the application on a variety of grounds. The proposed approach requires that any objection to the judgment itself must be brought in the province or territory where the judgment originated. As part of the Canadian federation, British Columbia should fully recognize judgments from other provinces. In other countries, a convenient phrase describes the operative principle. It is called giving "full faith and credit" to the judgment.

The Working Paper suggested that it is necessary to introduce a full faith and credit principle into our law for several reasons. The political structure of Canada requires respect and cooperation between the provinces in the enforcement of judgments. Traditional principles of the law that restrict or inhibit such a result are contrary to the best interests of the country and of the provinces. British Columbia's economic prosperity depends upon its participation in the national and world economy, and the enforcement of obligations across provincial borders is a necessary aspect of that participation.

Several significant developments in relation to this topic have occurred since the Commission issued the Working Paper.

B. Reform on a National Scale

The proposals set out in the Working Paper reflected our view that British Columbia should, if necessary, take the lead in achieving national reform in this area. This could mean proceeding alone and, as a result, British Columbia would give greater weight to judgments from other provinces than they give to ours.[2] We also recognized that if a way could be found to stimulate similar action by other provinces and territories a great deal more would be achieved. Accordingly, the Working Paper set out what it described as a "blueprint for provincial cooperation."

The suggestion made was that the reform process should involve two national institutions – the annual meeting of Attorneys General and Ministers of Justice, and the Uniform Law Conference of Canada. The involvement of Justice officials was

2. At least initially, until other provinces also adopt a full faith and credit approach.

desirable to "test the political will for national cooperation on the enforcement of judgments." The Uniform Law Conference would contribute its expertise in developing legislation intended for adoption throughout Canada.

In 1990 the Attorneys General and Ministers of Justice met at Niagara-on-the-Lake and their agenda included a consideration of the British Columbia Law Reform Commission proposals. The justice officials endorsed those proposals in principle and referred the matter to the Uniform Law Conference of Canada. The reference requested the Conference to develop uniform legislation on the enforcement of Canadian judgments on a "full faith and credit basis" based "to the extent appropriate" on the Working Paper proposals.[3]

The Uniform Law Conference considered the reference initially at its 1990 meeting and established machinery to deal with it. Since the enforcement of judgments portion of the reference was furthest advanced, a draft Act was available for consideration by the Conference at its 1991 meeting. At that meeting the Conference settled the contents of a *Uniform Enforcement of Canadian Judgments Act*.[4] Hereafter we refer to the Uniform Act as the "UECJA."

C. The *Morguard* Case

A second significant development since we issued the Working Paper is the decision of the Supreme Court of Canada in *Morguard Investments Ltd.* v. *De Savoy*.[5] The case involved a plaintiff who had taken judgment in Alberta and wished to enforce the judgment in British Columbia. In issue was whether the Alberta court had properly taken jurisdiction in the case – a necessary precondition to the enforceability of the judgment in British Columbia. While it appears the Alberta court was without jurisdiction according to the traditional rules of private international law the Supreme Court of Canada did not see that as the end of the matter. It stated a new basis for the adoption of jurisdiction: there must be a "real and substantial connection" be-

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3. The reference, which is set out in full as Appendix A, also requested the Conference to develop uniform legislation in respect of court jurisdiction and the transfer of proceedings between the courts of the Canadian provinces and territories. This suggestion had also been made in the Working Paper.
4. Work continues on the other portions of the reference.
5. [1991] 2 W.W.R. 217.

tween the litigation and the place it occurs. On that basis, the Alberta court did have jurisdiction.

Morguard was a sweeping decision and a period of uncertainty is likely as future decisions explore its implications. The new basis for jurisdiction will, arguably, make it more difficult to resist the enforcement of an out-of-province judgment. While *Morguard* clearly endorsed the proposition that the enforcement of judgments between Canadian provinces should be easier, it did not achieve full faith and credit. A debtor can still raise objections as to jurisdiction or other matters to stall or defeat the creditor. The effect of *Morguard* is simply that some of those objections are less likely to succeed than formerly.

D. *Interim Report on Enforcing Judgments from Outside the Province*

Early in 1991 the Law Reform Commission issued an interim Report on two discrete issues in this area.[6] One issue concerned an anomaly which had arisen respecting the limitation period applicable to the enforcement of an out-of-province judgment. The second issue flowed from the *Morguard* decision.

Part 2 of the *Court Order Enforcement Act* provides machinery for the reciprocal enforcement of money judgments. That machinery is available only if certain jurisdictional rules have been met. The Act contains a statement of those rules as they existed before *Morguard*. As such, they are obsolete. The ironic result is that a wider range of out-of-province judgments may be enforced by bringing an action on the judgment than may be enforced under the reciprocal enforcement legislation, although the latter supposedly enhances the legal position of the judgment creditor.

The Interim Report recommended that any judgment emanating from a reciprocating jurisdiction, that would be enforceable by action under the principles set out in *Morguard*, should also be enforceable under the reciprocal legislation.

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6. Law Reform Commission of British Columbia, *Interim Report on Enforcing Judgments from Outside the Province* (LRC 117, 1991).

E. This Report

1. Our Recommendations

(a) Adoption of the UECJA

The focus of this Report is the UECJA. We think it important to say, at the outset, that we recommend its enactment in British Columbia. The Uniform Law Conference adopted the proposals made in our Working Paper as the point of departure for its work. The UECJA refines and extends many of the principles involved and, for the most part, this process has resulted in an improvement over our original proposals. Not surprisingly, there are some UECJA innovations about which we are less enthusiastic than others. The Act as a whole, however, has our complete support.

British Columbia as a province and the Law Reform Commission, as an institution, have played a leadership role in pressing for the development of uniform legislation suitable for enactment throughout Canada. The UECJA represents a consensus that should be maintained. We stand on the threshold of achieving a truly significant reform on a national scale.

(b) Other Recommendations

Apart from endorsing the adoption of the UECJA, our recommendations in this Report focus on three issues. The first is the most effective way to integrate the provisions of the UECJA with existing provincial legislation on the enforcement of judgments. The second concerns ways in which the Act should be supplemented to deal with problems that may arise from the unauthorized registration of an out-of-province judgment or order. The final issue concerns the development of administrative procedures that will monitor the operation of the Act so, after an appropriate period, an evaluation can be made.

2. The Format Of This Report

The next Chapter will set out a general description of the current law in relation to the enforcement of judgments between Canadian provinces. Following that will be a discussion of the need for reform. This will set the stage for a description and discussion of the UECJA itself. The specific recommendations described above will then be developed in the final chapters of the Report.

A. Introduction

1. General

What must be done to enforce a judgment from out of the province?[1] In British Columbia, the judgment may be sued on or registered under reciprocal enforcement of judgments legislation. The common law controls when and what kinds of judgments may be enforced in the province. Even reciprocal enforcement of judgments legislation operates against a background of common law principles.

This Chapter examines the common law on the recognition and enforcement in British Columbia of judgments from outside the province. Similar principles apply in all common law countries.

2. General Principles

(a) International Law

Relationships between different countries (and their citizens) are controlled by international law, which is of two types. "Public" international law governs the relationship between countries.[2] "Private" international law determines which territory's courts may hear a particular matter, and what law is to resolve it. It is private international law that controls the enforcement of judgments between countries and, in Canada, between provinces.

Nevertheless, the law concerning the enforcement of foreign judgments is influenced by principles of public international law.[3] In part, this is because the court's power is derived from the state, and the state exercises its own authority through the court. Consequently, an attempt to enforce a judgment from one

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1. The discussion in this Chapter is based on that set out in the *Working Paper on The Enforcement of Judgments Between Canadian Provinces* (No. 64, 1989).
2. *See, e.g.*, Brownlie, *Principles of Public International Law* (3d ed., 1979) Chap. 14.
3. Many of the rules of private international law were originally based on principles of public international law. *See, e.g., Schibsby* v. *Westenholz*, (1870) 6 L.R. Q.B. 155, 160-1. Quebec, a civil law jurisdiction, adopts a slightly different approach to the enforcement of judgments from out of the province: *see* W.S. Johnson, "Foreign Judgments in Quebec," (1957) 35 Can. B. Rev. 911.

country in another is an assertion of one state's authority in another. It is an interference with the other state's "sovereignty."

(b) Sovereignty

The word "sovereign" has several meanings, all of which usually describe something that is supreme, superior or pre-eminent. With respect to countries, none is superior to another. Each, within its own sphere, is "sovereign."

A state has sovereign jurisdiction over all persons, property and events within its territory and is under a duty to respect the ability of other states to control persons, property and events within their own territories.[4] For this reason, one state may not dictate legal rights and consequences within other states.[5]

As a general proposition, a state is not required to give effect to a judgment from another,[6] although an exception is recognized for judgments for the payment of money.

3. Judgments For The Payment Of Money

There are a number of theories explaining why, in the face of principles of sovereignty, courts will enforce foreign judgments for the payment of money.[7] One explanation is that a money judgment is simply regarded as a debt, and enforceable as such.[8]

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4. *Tallack* v. *Tallack*, [1927] P. 211, 221.
5. A state has authority over nationals outside its territory: Brownlie, *supra*, n. 2; *see, e.g., Criminal Code*, R.S.C. 1985, c. C-46, s. 46(3) (treason). But this jurisdiction does not subtract from the authority of the state in whose territory the national resides.
6. *Marcotte* v. *Megson*, (1987) 24 C.P.C. (2d) 201, 210 (B.C. Co. Ct.).
7. *See* Morris, ed., *Dicey and Morris on The Conflict of Laws* (10th ed., 1980) 1037-8; Caffrey, *International Jurisdiction and the Recognition and Enforcement of Foreign Judgments in the LAWASIA Region: A Comparative Study of the Laws of Eleven Asian Countries Inter-se and with the E.E.C. Countries* (1982) 37-62. Some of these reasons for enforcement:
   (1) comity: foreign judgments are enforced because if they were not, local judgments would not be enforced in other juriadictions; *see, e.g., Touche Ross Ltd.* v. *Sorrel Resources Ltd.*, (1987) 11 B.C.L.R. (2d) 184 (S.C.);
   (2) reciprocity: *see, e.g., Godard* v. *Gray*, (1870) 6 L.R.Q.B. 139, 148 *per* Blackburn J.;
   (3) the vested rights theory; and
   (4) the obligation theory.

   Practical reasons may also be identified for the enforcement of foreign money judgments: commercial expediency; mutual utility; and a desire to do justice between the parties: *see, e.g.*, North and Fawcett, *Cheshire and North's Private International Law* (11th ed., 1987) 4.
8. *Godard* v. *Gray*, *ibid.* This is the "obligation" theory. *See, e.g., Dupleix* v. *De Roven*, (1705) 2 Vern. 540, 23 E.R. 950; *Barned's Banking Co.* v. *Reynolds*, (1875) 36 U.C.Q.B. 256; *Monast* v. *Provincial Insurance Co. Ltd.*, (1939) O.W.N. 113 (H.C.).

B. Methods of Enforcement

1. Generally

A creditor who takes a judgment in one province has two methods available for enforcing it in another province. The judgment may be sued on as a debt or it may be registered under reciprocal enforcement of judgments legislation.[9]

In either case, it is open to the judgment debtor to contest the proceeding. Sometimes, a person with a judgment from outside the province must relitigate all or part of the claim or establish that various procedures were followed to obtain the judgment, before steps may be taken to recover any of the money owed. The first judgment does not always take the judgment creditor very far.

2. Reciprocal Enforcement Of Judgments

All the provinces and territories except Quebec have legislated in almost identical form to provide for the reciprocal enforcement of judgments. The British Columbia version of this legislation is set out in Appendix B. The legislation is procedural in that it purports to provide a summary method of bringing the judgment to the attention of local courts that is a quicker and less expensive alternative to enforcing judgments by action.[10] The legislation has not enlarged the range of foreign money judgments that may be enforced in British Columbia and it does not appear to represent much of an improvement over the common law.[11]

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9. It may also be possible to bring the action again as if the earlier proceeding had not taken place. *Barned's Banking Co., ibid.*; *Webster* v. *Connors Bros. Ltd.*, [1935] 2 D.L.R. 483 (N.B.S.C.), *aff'd*, [1936] 2 D.L.R. 164 (N.B.S.C.A.D.). *Monast, ibid.* The usual rule is that a claim is replaced by the judgment. This is the doctrine of merger, but it does not apply to foreign judgments: *see Marcotte, supra*, n. 6, at 217; Blom, "The Enforcement of Foreign Judgments in Canada," (1978) 57 Or. L. Rev. 399, 405. Another principle is that, once a judgment has been handed down, the dispute may not be litigated again, nor can the judgment be challenged on its merits. This is called "estoppel *per rem judicatam*:" *see* Turner, *The Doctrine of Res Judicata* (2d ed., 1969) 1-5. This rule does not prevent a plaintiff from suing on his claim in another jurisdiction. If the plaintiff lost in the first action, however, it is open to the defendant to raise that as a defence to the second action: *Manolopoulos* v. *Pnaiffe*, [1930] 2 D.L.R. 169 (N.S.C.S.A.D.); *cf. Law* v. *Hansen*, (1895) 225 S.C.R. 69, 73. The defence may not succeed if the first action was lost for a reason unrelated to the merits of the case, such as the expiration of a limitation period.

10. *Can. Credit Men's Trust Ass'n. Ltd.* v. *Ryan*, [1930] 1 D.L.R. 280, 281-2 (Alta. S.C.). *See also First City Capital Ltd.* v. *Lupul*, [1987] 6 W.W.R. 212, 215 (Sask. C.A.); *Rafferty's Restaurants Ltd.* v. *Sawchuk*, [1983] 3 W.W.R. 261, 263 (Man. Co. Ct.); *Moore* v. *Mercator Enterprises Ltd.*, (1978) 90 D.L.R. (3d) 590, 599 (N.S.S.C.).

11. Swan, "Recognition and Enforcement of Foreign Judgments: A Statement of Principle," in Springman & Gertner, eds., *Debtor-Creditor Law: Practice and Doctrine* (1985) 641, 704, n. 38.

C. Kinds of Judgments that Will be Enforced

There are different kinds of money judgments. A judgment may be for a lump sum of money or call for periodic payments. A judgment may be made on an interim basis, until a full trial can take place. A judgment made after trial may be final or subject to variation. Judgments that are subject to variation may be reviewable at set times or on the application of a party. Not all monetary judgments are enforceable between the provinces.

The common law requires a judgment to be final and conclusive before another province will enforce it. A judgment that may be set aside or varied by the court is not regarded as sufficient evidence of the existence of a debt.[12]

After a judgment is made, the court may still retain some authority to affect it. The court may order that it be paid in instalments, or temporarily stay execution upon it.[13] Neither possibility, however, affects the judgment's "finality." It is only when a judgment may be set aside[14] or varied that it is not treated as final and conclusive.

A judgment's "finality" is not affected by whether it is under appeal, or whether the appeal period has passed.[15] The requirement for finality refers only to the jurisdiction of the granting court to alter its own judgment. A local court, however, may stay an action on a foreign judgment until an appeal is completed, or the time for an appeal passes.[16]

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12. *Nouvion* v. *Freeman*, (1889) 15 A.C. 1 (H.L.). Maintenance orders are usually variable and, consequently, are not enforceable at common law in another state: *Maguire* v. *Maguire*, (1921) 50 O.L.R. 100 (C.A.); *Ashley* v. *Gladden*, [1954] O.W.N. 255, *aff'd*, p. 558 (C.A.). Because of this gap in the common law a statutory scheme has been in place for many years for the enforcement of maintenance orders between provinces. *See Family Relations Act*, R.S.B.C. 1979, c. 121, ss. 70–70.93.

13. *E.g.*, *Barned's Banking Co.*, *supra*, n. 8, at 282.

14. A judgment may sometimes be obtained by "default," because the defendant has not contested the matter, *e.g.*, by failing to appear to, or to defend, the action. In some cases, a default judgment may be set aside: British Columbia, *Rules of Court* 17(11), 25(14) and 52(5). Nevertheless, these are still treated as "final" judgments: *Boyle* v. *Victoria Yukon Trading Co.*, (1902) 9 B.C.R. 213 (Full Ct.), 222-4; *Four Embarcadero Center Venture* v. *Mr. Greenjeans*, (1988) 64 O.R. (2d) 746, 761, 762 and 764 (H.C.), *aff'd*, (1988) 27 C.P.C. (2d) 16 (Ont. C.A.).

15. *Four Embarcadero Center Venture* v. *Mr. Greenjeans*, *ibid.*; *NEC Corp.* v. *Steintron International Electronics Ltd.*, (1985) 52 O.R. (2d) 201 (H.C.); *Pan American World Airways Inc.* v. *Varghese*, (1984) 7 D.L.R. (4th) 499, 45 O.R. (2d) 645 (H.C.); *C.R.F. Holdings Ltd.* v. *Smerchanski*, (1961) 10 Man. R. (2d) 393 (Q.B.); *Colt Industries, Inc.* v. *Sarlie* (No. 2), [1966] 3 All E.R. 85 (C.A.); *Davis* v. *Williams*, [1938] O.W.N. 504 (H.C.); *Eastern Trust Co.* v. *MacKenzie Mann & Co.*, (1916) 10 O.W.N. 445 (H.C.); *Nouvion*, *supra*, n. 12 at 10-11; *Barned's Banking Co.*, *supra*, n. 8.

16. *See* Rule 54(7); *cf. Campbell* v. *Morgan*, [1919] 1 W.W.R. 644, [1918] 2 W.W.R. 810 (Man. K.B.).

A judgment will not be enforced unless it is for a precise sum.[17]

D. Competence of the Court Granting the Judgment

1. The Legal Position Before Morguard

A judgment from out of the province will not be enforced unless the court granting it was competent to do so. Traditionally, a court has been regarded as competent to make a judgment if it has:

(a) jurisdiction over the defendant; and

(b) jurisdiction over the subject matter of the dispute.

While the issue of jurisdiction over the subject matter of a dispute has arisen occasionally,[18] questions concerning the enforceability of a judgment more often centred on whether the foreign court had jurisdiction over the defendant.[19]

EXAMPLE 1

A lives in British Columbia. B lives in Alberta. A sues B in a British Columbia court. B is served in Alberta. B appears for the sole purpose of disputing the court's jurisdiction. The British Columbia court must decide if it has jurisdiction.

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17. This requirement rarely causes difficulty. *But see, e.g., Sadler* v. *Robins*, (1808) 1 Camp. 253, 170 E.R. 948.

18. The issue may arise, *e.g.*, where the proceeding involves land outside the court's territory: *British South Africa Co.* v. *Companhia de Mocambique*, [1893] A.C. 602 (H.L.); *Boslund* v. *Abbotsford Lumber, Mining & Development Co.*, [1925] 1 W.W.R. 475 (B.C.C.S.); *Albert* v. *Fraser Companies Ltd.*, [1937] 1 D.L.R. 39 (N.B.S.C.A.D.); *Hesperides Hotels Ltd.* v. *Muftizade*, [1979] A.C. 508 (H.L.).

19. The problem arises where the defendant did not take part in the proceedings. When that happens, a plaintiff is entitled to take a default judgment without a hearing on the merits of his claim.

EXAMPLE 2

C lives in British Columbia. D lives in Alberta. D sues C in an Alberta court. C is served in British Columbia, but does not defend the action. Is D's judgment enforceable in British Columbia? The British Columbia court must decide whether the Alberta court had jurisdiction.

It would be logical for the law to have required the British Columbia court, in the two examples, to apply the same legal test since the issue is the same – does (or did) the court have jurisdiction.

But logic did not prevail. In determining the scope of their own jurisdiction (example 1), the tendency of the courts has been to rely upon procedural enactments for guidance. The principal enactment has come to be the portion of the *Rules of Court* which specify circumstances when a defendant may be served with legal process outside the borders of the province. In British Columbia these circumstances are found in Rule 13.[20] The focus of Rule 13 is very much on the subject matter of the litigation rather than the characteristics of the parties to it. A majority of the circumstances enumerated in Rule 13 where service may be made outside the province require no particular connection between the person served and British Columbia.

This must be contrasted with the tests which the courts have applied in proceedings to enforce out-of-province judgments (example 2) when the issue is whether or not the other court should have taken jurisdiction. Here the tests have applied a different set of rules.

These were the traditional rules of private international law.[21] These rules are narrow. Jurisdiction will only be recognized where the defendant was present in the court's territory when the action was commenced[22] or voluntarily submitted to

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20. *See* Appendix C.
21. *Marcotte, supra*, n. 6, at 211; *Veco Drilling Inc.* v. *Armstrong*, [1982] 1 W.W.R. 177 (B.C.S.C.).
22. *Singh* v. *The Rajah of Faridkote*, [1894] A.C. 670; *Emmanuel* v. *Symon*, [1908] 1 K.B. 302 (C.A.); *Re Kelowna & District Credit Union and Perl*, (1984) 13 D.L.R. (4th) 756, 758-759 (Alta. C.A.); Morris, *supra*, n. 7, 1043-1044. *(cont....)*

the court's jurisdiction. These rules tend to regard a court's competence as confined to the borders of its territory.

The reason why the more restrictive test is applied to foreign judgments can be explained. The law of some states on when a court may assert jurisdiction over a defendant who lives outside its territory may be unacceptably wide.[23] The rules of private international law provide a more objective standard to assess jurisdiction, but these rules were formulated in another day, and tend to be very conservative. Nevertheless, many situations in which Canadian courts will accept jurisdiction are considered exorbitant by private international law.[24]

In summary, when a court's own jurisdiction is in issue the links between the forum and the subject matter of the litigation seem to carry greatest weight. When the jurisdiction of a court in a different province or country is in issue the tendency has been to emphasize links between the defendant and the forum.

The principles which determine whether a court has jurisdiction over a defendant must now be reviewed in the light of the *Morguard* case.

2. The Morguard Principles

The *Morguard* case involved a mortgage on land in Alberta. The borrower moved from Alberta to British Columbia. When the mortgage went into default, the lender brought proceedings in Alberta. None of the traditional bases for asserting jurisdiction over an absent defendant, recognized by principles of private international law, were present. This, however, did not prevent the Alberta court from giving judgment on the personal covenant (similarly, a British Columbia court in analogous circumstances would have accepted jurisdiction and granted a judgment to the lender). The lender brought an action in British Columbia on the

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22. *(...cont'd.)* Corporations are resident in a state if they carry on business in it: *Church of Scientology of California* v. *World Federation for Mental Health, Inc.*, (1981) 31 B.C.L.R. 136 (C.A.); *Vogel* v. *R. and Kohnstamm Ltd.*, [1973] 1 Q.B. 133; Morris, *ibid.*, 1053-4; McLeod, *The Conflict of Laws* (1983) 586; *Schibsby, supra*, n. 3; *Emmanuel* v. *Symon*, [1908] 1 K.B. 302 (C.A.); *see also Marshall* v. *Houghton*, (1923) 33 Man. R. 166; [1923] 2 W.W.R. 553 (C.A.). Neither nationality or domicile is a ground for asserting jurisdiction over a person outside the territory: *Patterson* v. *D'Agostino*, (1975) 58 D.L.R. (3d) 63 (Ont. Co. Ct.); *Vogel* v. *Kohnstamm Ltd.*, [1973] 1 Q.B. 133 (H.C.).

23. *See* De Winter, "Excessive Juriadiction in Private International Law," (1968) 17 I.C.L.Q. 706.

24. Two provinces allow their courts to assume jurisdiction over any defendant located within Canada or the United States: Nova Scotia *Civil Procedure Rules*, Rule 10.17; Prince Edward Island *Rules of Court*, Rule 10.07; *see also* Quebec's *Code of Civil Procedure*, R.S.Q. 1977, c. C-25, art. 137, as am. S.Q. 1983, c. 28, s.1.

Alberta judgment. The judgment debtor defended the action asserting that the Alberta court had no jurisdiction to grant the judgment. At trial and on appeal it was held that the Alberta judgment was valid and enforceable in British Columbia.[25]

The British Columbia Court of Appeal based its decision on the view that a local court should recognize a judgment from another province if the granting court took jurisdiction in circumstances where, if the facts were transposed to British Columbia, the court in British Columbia would have taken jurisdiction. On the facts, this test was satisfied, and the Alberta judgment was enforceable in British Columbia.

The Supreme Court of Canada confirmed the decision of the Court of Appeal in result but adopted a different basis for determining when a court in one province should enforce a Canadian judgment emanating from another province.[26] The Supreme Court of Canada rejected the reciprocity approach in favour of a substantial connection test. The court of one province should enforce a judgment emanating from another province where the defendant or the subject matter of the dispute has a real and substantial connection with the place where the judgment is granted. Mr. Justice La Forest regarded this as a reasonable constitutional limit on the jurisdiction of a province's courts.

In reaching this result, the Supreme Court of Canada redefined the principle at work: the reason for enforcement is comity, but not simply limited to its traditional sense of respect for the sovereignty of another state. It is comity in the sense of mutual self-interest and convenience, largely arising from the needs of cross-border commerce and the nature of the Canadian federation:[27]

> For my part, I much prefer the more complete formulation of the idea of comity adopted by the Supreme Court of the United States in *Hilton* v. *Guyot* in a passage cited by Estey J. in *Spencer* v. *The Queen* as follows:
>
> > "Comity" in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are

25. *See* (1987) 18 B.C.L.R. (2d) 262, [1988] 1 W.W.R. 87 (S.C.); (1988) 27 B.C.L.R. (2d) 155, [1988] 5 W.W.R. 650.
26. [1991] 2 W.W.R. 217.
27. *Ibid.*, at 232-33.

> under the protection of its laws": *Hilton* v. *Guyot*, 159 U.S. 113 (1895), at pp. 163-64.
>
> As Dickson J. in *Zingre* v. *The Queen*, citing Marshall C.J. in *The Schooner Exchange* v. *M'Faddon*, (1812) stated, "common interest impels sovereigns to mutual intercourse" between sovereign states. In a word, the rules of private international law are grounded in the need in modern times to facilitate the flow of wealth, skills and people across state lines in a fair and orderly manner. Von Mehren and Trautman have observed in "Recognition of Foreign Adjudications: A Survey and A Suggested Approach": "The ultimate justification for according some degree of recognition is that if in our highly complex and interrelated world each community exhausted every possibility of insisting on its parochial interests, injustice would result and the normal patterns of life would be disrupted."

The principles identified by the court seem broad enough to apply not only to Canadian judgments, but all foreign judgments. Nevertheless, the focus of Mr. Justice La Forest's judgment was confined to a Canadian context:[28]

> For present purposes it is sufficient to say that, in my view, the application of the underlying principles of comity and private international law must be adapted to the situations where they are applied, and that in a federation this implies a fuller and more generous acceptance of the judgments of the courts of other constituent units of the federation. In short, the rules of comity or private international law as they apply between the provinces must be shaped to conform to the federal structure of the Constitution.

The concern most often voiced in this context is the plight of the defendant who must answer litigation commenced away from his or her residence. Mr. Justice La Forest addressed this concern:[29]

> I am aware, of course, that the possibility of being sued outside the province of his residence may pose a problem for a defendant. But that can occur in relation to actions *in rem* now. In any event, this consideration must be weighed against the fact that the plaintiff, under the English rules, may often find himself subjected to the inconvenience of having to pursue his debtor to another province, however just, efficient or convenient it may be to pursue an action where the contract took place or the damage occurred. It seems to me that the approach of permitting suit where there is a real and substantial connection with the action provides a reasonable balance between the rights of the parties. It affords some protection against being pursued in jurisdictions having little or no connection with the transaction or the parties. In a world where even the most familiar things we buy and sell origi-

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28. *Ibid.*, at 236. The application of the *Morguard* principles to judgments from outside Canada is only beginning to be considered by the courts. In *Clarke* v. *Lo Bianco*, [1991] 59 B.C.L.R. (2d) 334 (S.C.) the enforcement of a California judgment was permitted. The court relied expressly on *Morguard*. *See also Minkler* v. *Sheppard*, (1991) 60 B.C.L.R. 360 (S.C.). *Compare*, *Hoopman Estate* v. *Imrie*, [1991] 57 B.C.L.R. (2d) 310 (S.C.).
29. *Ibid.*, at 241.

nate or are manufactured elsewhere, and where people are constantly moving from province to province, it is simply anachronistic to uphold a "power theory" or a single situs for torts or contracts for the proper exercise of jurisdiction.

For the purposes of the present discussion, one principle proposition seems to flow from *Morguard*. Even if the court that gave the out-of-province judgment did not have jurisdiction under the traditional rules of private international law, it should still be enforced if there was a real and substantial connection between the litigation and the forum.[30] The application of this principle to specific fact patterns, however, remains to be worked out in the cases.

3. Voluntary Submission

All of the rules which govern when a court may take jurisdiction are irrelevant if a defendant chooses to submit to the court's jurisdiction. There are three ways in which submission may occur.

(a) Taking Part in the Proceedings

No question about jurisdiction arises if a person accepts another's choice of the appropriate court for litigating the matter. Acceptance may be signified in a number of ways, all of which indicate a desire to defend the action. A person who accepts is said to "voluntarily submit" or "attorn" to the court's jurisdiction.[31]

What is sufficient to qualify as voluntary submission? Taking part in the court proceedings and contesting the plaintiff's claim is clearly voluntary submission,[32] as is any formal step taken in the proceedings for that purpose. A defendant who wishes to contest a claim files with the court a document called an "appearance." That alone is sufficient to constitute a voluntary submission.[33]

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30. And there are no other bars to enforceability.
31. *Emmanuel, supra*, n. 22 at 309 *per* Buckley L.J.
32. *Re Attorney-General of British Columbia and Becker*, (1978) 87 D.L.R. (3d) 536 (B.C.S.C.); *United States of America* v. *Cassidy*, (1977) 79 D.L.R. (3d) 635 (B.C.S.C.); *Clinton* v. *Ford*, (1982) 37 O.R. (2d) 448 (C.A.).
33. *E.g., Nelson* v. *Payne*, (1968) 64 W.W.R. 175 (B.C.S.C.); *cf. Canada Trustco Mortgage Co.* v. *Rene Management & Holdings Ltd.*, (1988) 53 D.L.R. (4th) 222, 230 (Man. C.A.). *See* Rule 14 of the *Rules of Court*. Even sending a letter to the court may constitute submission: *Reglass Consultants Inc.* v. *Kennedy*, (1984) 65 B.C.L.R. 393 (C.A.); *Re Overseas Food Importers & Distributors Ltd. and Brandt*, (1981) 126 D.L.R. (3d) 422 (B.C.C.A.). *(con't....)*

(b) Commencing an Action

Usually a judgment is obtained by a plaintiff, but it is open to a defendant to raise claims against the plaintiff. If judgment is made in favour of the defendant, the plaintiff cannot object to the court's jurisdiction. Commencing an action is a voluntary submission to the court's jurisdiction, not just for the original claim but for any matter properly raised in the proceedings.[34]

(c) Submitting by Contract

When two people enter into a business enterprise that has cross-border implications, they are well-advised to settle in advance anticipated problems. For example, they may agree on the law that should govern their dealings, or decide which territory's courts are to have jurisdiction to resolve a dispute between them.

An agreement to submit to a court's jurisdiction qualifies as a voluntary submission,[35] but nothing less than an express agreement will do.[36]

E. Defences Other than Jurisdiction

A person who wishes to resist the enforcement of a judgment from outside the province has only two general lines of defence. First, if under the applicable jurisdictional rules the court

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33. *(...cont'd.)*
A distinction must be drawn between contesting a claim on its merits and objecting to a court's exercise of jurisdiction. Rule 14(6) authorizes an application for a declaration that the court declines jurisdiction. Filing an appearance to dispute whether a court should hear the matter is not a submission to the court's jurisdiction. Rule 14(8); *Dovenmuehle* v. *Rocca Group Ltd.*, (1981) 85 A.P.R. 444, *aff'd*, [1982] 2 S.C.R. 534; *Re Dulles Settlement Trusts*, [1951] 2 All E.R. 69 (C.A.); *Church of Scientology of California*, *supra*, n. 22 (B.C.C.A.); *cf. Henry* v. *Geoprosco International Ltd.*, [1976] Q.B. 726 (C.A.); *Kennedy* v. *Trites Ltd.*, (1916) 10 W.W.R. 412 (B.C.S.C.); *Re McCain Foods Ltd. and Agricultural Publishing Co.*, (1979) 103 D.L.R. (3d) 724, 26 O.R. (2d) 758 (H.C.), *aff'd*, 26 O.R. (2d) 768n (C.A.). An issue considered in a number of cases is the effect of filing an appearance in order to contest both the court's juriadiction and the merits of the plaintiff's claim. At one time, it was considered that any step contesting the merits of a case, even one combined with an objection to the court's jurisdiction, constituted a submission to the court's jurisdiction: *Re Dulles Settlement Trusts*, *ibid.*; *Clinton* v. *Ford*, (1982) 37 O.R. (2d) 448 (C.A.); *Richardson* v. *Allen*, (1916) 28 D.L.R. 134 (Alta. S.C.A.D.); *Henry* v. *Geoprosco*, *ibid.* But that position was not adopted in *Church of Scientology of California*, *ibid.*

34. *Clitherow* v. *Krushnisky*, (1987) 11 B.C.L.R. (2d) 11; 22 C.P.C. (2d) 314 (S.C.); *S.r.l. Rolimex* v. *McCormack Zatzman Ltd.*, (1979) 78 A.P.R. 436 (N.B.S.C.); *Swaisie* v. *Swaisie*, (1899) 31 O.R. 324 (Div. Ct.).

35. *Veco Drilling Inc.*, *supra*, n. 21; *Vogel*, *supra*, n. 22; *First City Capital Ltd.*, *supra*, n. 10; *Mattar* v. *Public Trustee*, [1962] 3 D.L.R. 399 (Alta. S.C.A.D.); *cf. Blohn* v. *Desser*, [1962] 2 Q.B. 116; *Bank of Montreal* v. *Snoxell*, (1982) 143 D.L.R. (3d) 349 (Alta. Q.B.).

36. An agreement that the law of a particular province is to govern a dispute, for example, is not a voluntary submission to the jurisdiction of the courts of that province. *First City Capital Ltd.* v. *Winchester Computer Corp.*, (1987) 44 D.L.R. (4th) 301 (Sask. C.A.); *Dunbee Ltd.* v. *Gilman & Co.*, (1968) 70 S.R. (N.S.W.) 219 (C.A.).

was not competent to deal with the dispute, the judgment cannot be enforced.

Other lines of defence may also be open to a judgment debtor. Matters may be raised relating to procedural fairness and public policy, among other things. Some of the defences available to a judgment debtor depend upon the nature of the foreign judgment. Others are concerned with the way in which the judgment was obtained.[37]

1. Foreign Revenue Or Penal Law

A judgment from one country to recover taxes or a penalty (such as a fine imposed for committing an offence) will not be enforced by another country.[38] It is considered inappropriate for one state to allow its judicial machinery to assist another for these purposes. Does the same policy apply to a judgment from another province?

The issue appears to have arisen in only two cases. Neither case involved a claim reduced to judgment. In *City of Regina* v. *McVey*,[39] an Ontario court refused to enforce a tax claim from Saskatchewan. In *Weir* v. *Lohr*,[40] however, it was said that the rule against enforcing foreign tax claims should not apply between the provinces.

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37. What the defendant cannot do is resist the claim on its merits. *See, e.g., Four Embarcadero Center Venture* v. *Kalen*, (1988) 65 O.R. (2d) 551, 562-570 (H.C.), *aff'd*, (1988) 27 C.P.C. (2d) 16 (Ont. C.A.). *May* v. *Shell Company of Hong Kong Ltd.*, [1981] 1 W.W.R. 193 (B.C.C.A.); *Batavia Times Publishing Co.* v. *Davis*, (1977) 18 O.R. (2d) 252 (H.C.), *aff'd*, (1979) 260 O.R. (2d) 249 (C.A.); *Vanquelin* v. *Bouard*, (1863) 15 C.B. (N.S.) 341, 143 E.R. 817. In British Columbia, a slightly different position has been adopted: *see infra* at n. 45. In Manitoba a judgment debtor may contest at least some of the merits of a plaintiff's original cause of action: *Queen's Bench Act*, R.S.M. 1970, c. C280, s. 83. The Manitoba Law Reform Commission has recommended that s. 83 be repealed: *Report on Section 83 of The Queen's Bench Act: The Conclusiveness of Foreign Judgments in Manitoba* (Report No. 65, 1986). In Quebec, a judgment debtor may plead "any defence which was or might have been set up to the original action:" *Code of Civil Procedure*, R.S.Q. 1977, c. C-25, art. 178. *See, e.g., Paterson & Sons Ltd.* v. *St. Lawrence Corporation Ltd.*, [1974] S.C.R. 31. A judgment from another province, however, is regarded as final and conclusive if the judgment debtor was personally served or voluntarily submitted to the jurisdiction of the court that granted the judgment: Articles 179 and 180, Quebec *Code of Civil Procedure*.

38. *Government of India* v. *Taylor*, [1955] A.C. 491 (H.L.); *United States of America* v. *Harden*, [1963] S.C.R. 366, *aff'g*, 36 D.L.R. (2d) 602 (B.C.C.A.); *Huntington* v. *Attrill*, [1893] A.C. 151 (J.C.P.C. Ont.).

39. (1922) 23 O.W.N. 32 (Co. Ct.). *See* the comment in (1923) 1 Can. B. Rev. 293 and (1928) 6 Can. B. Rev. 631.

40. (1967) 65 D.L.R. (2d) 717, 721-723 (Man. Q.B.).

2. Public Policy

Public policy, in the sense of local views and morality, may require that a judgment from out of province not be enforced.[41] In most places, for example, it is against public policy to enforce contracts for various illegal activities, like gambling or prostitution. Enforcement of a judgment for a gambling debt from one country may be against the public policy of another country.

The defence is rarely successful. Public policy is relevant only "when the foreign law offends a principle of morality or justice which commands almost universal recognition."[42]

3. Breach Of Natural Justice

Rules to ensure fairness govern the conduct of a proceeding that takes place before a person or tribunal required to act judicially. For example, the decision maker must be impartial, and each party must have an opportunity to state his case. These are the rules of "natural justice." There are cases in which judgments made in breach of these rules would not be enforced.[43]

4. Manifest Error

As a general rule, a court asked to enforce a judgment from out of the province is not concerned with the merits of the judgment.[44] A defendant who feels that the court reached the wrong decision in its judgment must pursue that issue by appeal in the territory where the judgment was granted.

A small group of cases, however, hold that the normal rule does not apply to a default judgment which reflects a manifest error. A default judgment is made without a consideration of the merits of the case because the defendant chose not to take part in the proceedings. Most of the cases in which the Court inquired

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41. Castel, *Canadian Conflict of Laws* (2d ed., 1986) 153-5. *Canadian Imperial Bank of Commerce* v. *Brown*, (1986) 3 B.C.L.R. (2d) 270 (S.C.); *United States*, *supra*, n. 38; *First Interstate Bank* v. *Seeley*, (1983) 54 A.R. 285 (Q.B.); *Battaglia* v. *Ballas*, (1983) 49 A.R. 352 (Q.B.); *Bank of Montreal* v. *Snoxell*, (1982) 143 D.L.R. (3d) 349 (Alta. Q.B.).
42. *First Interstate Bank*, *ibid.*, at 287.
43. *See*, *e.g.*, *May*, *supra*, n. 37; *S.r.l. Rolimex* v. *McCormack, Zatzman, Ltd.*, (1979) 78 A.P.R. 436 (N.B.S.C.); *Jacobson* v. *Frachon*, (1927) 44 T.L.R. 103, 138 L.T.R. 386 (C.A.).
44. *Nouvion*, *supra*, n. 12. *Four Embarcadero* v. *Mr. Greenjeans*, *supra*, n. 14.

into the merits of a default judgment are from British Columbia.[45]

5. Fraud

A court may refuse to enforce a judgment from outside the province if it was obtained fraudulently.[46] While a court should not allow itself to be a party to fraud, this position is another exception to the policy against inquiring into the merits of a foreign judgment.[47]

6. Statutory Restrictions

Legislation affects the enforceability of two kinds of foreign judgments. A judgment arising out of loss or injury caused by asbestos mined in British Columbia is unenforceable in the province.[48] At the federal level, the Attorney General of Canada may prohibit the recognition and enforcement of a foreign money judgment arising out of an anti-trust proceeding.[49]

F. Reciprocal Enforcement of Judgments Legislation

1. Introduction

Legislation aimed at simplifying the enforcement of judgments between the provinces has been enacted in every province except Quebec.[50] It is referred to as reciprocal enforcement of judgments legislation, and it forms Part 2 of the British Columbia *Court Order Enforcement Act*.[51]

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45. *Boyle* v. *Victoria Yukon Trading Company*, (1902) 9 B.C.R. 213 (Full Ct.); *Re Gacs and Maierovitz*, (1968) 68 D.L.R. (2d) 345 (B.C.S.C.); *May*, *supra*, n. 37; *MacFarlane* v. *Briggs*, (1976) 18 A.P.R. 153 (N.B.S.C.); *Marcotte*, *supra*, n. 6 at 216 and 224; *575225 Saskatchewan Ltd.* v. *Boulding*, (1988) 27 B.C.L.R. 352, 355-356, [1988] 6 W.W.R. 738. It is a defence that has been firmly rejected in several provinces, including Ontario: *Four Embarcadero* v. *Kalen*, *supra*, n. 37.

46. *Moore* v. *Mercator Enterprises Ltd.*, (1978) 90 D.L.R. (3d) 590 (N.S.S.C.); *Roglass Consultants*, *supra*, n. 33; *Cheshire and North's Private International Law*, *supra*, n. 7 at 371-373; *Caffrey*, *supra*, n. 7 at 202-211; *Dicey and Morris on The Conflict of Laws*, *supra*, n. 7 at 1081-1086.

47. On occasion, a distinction is drawn between a fraud perpetrated on the court granting the judgment and a claim which is in some way tainted with fraud. It has been suggested that, in terms of principle, a court asked to enforce a foreign judgment should only be concerned with the first category of fraud: *Cheshire & North*, *ibid.*

48. *Court Order Enforcement Act*, R.S.B.C. 1979, c. 75, Part 2.1.

49. *Foreign Extraterritorial Measures Act*, R.S.C. 1985, c. F-29, s. 8.

50. Some non-Canadian jurisdictions are reciprocating states. These are found in a list appended to the legislation: *see* Appendix B. Our comments on the enforcement of judgments between provinces also apply to judgments from these other reciprocating states.

51. R.S.B.C. 1979, c. 75.

2. Overview

The Act allows a judgment[52] from another province to be registered in British Columbia. Once registered, it is enforceable as if made by a local court.

The legislation sets out when a judgment may be registered and in what situations registration must be refused or set aside. The procedure for registering a judgment is also addressed in the legislation, though points of detail are more fully set out in the *Rules of Court*.[53]

The legislation operates against a background of the common law and, as well, codifies much of the law discussed earlier in this Chapter. Some aspects of the common law are carried forward several times in the legislation, in an anxious attempt, it would appear, to change as little of the law as possible.

A judgment creditor must apply[54] to the court for an order to register the judgment. A set of rules determines when the judgment creditor is required to notify the judgment debtor of the application. Rule 54 sets out the procedure to be followed for registering a judgment under Part 2 of the *Court Order Enforcement Act*.[55]

3. Defences

A number of defences are available to a judgment debtor who opposes the registration of a judgment from outside the province, or who wishes a registration set aside. For the most part, the defences listed in the legislation correspond to those available at common law to an action on the judgment. Moreover, after listing specific defences, the Act then goes on to provide that all of the common law defences are also available:

> **31.** (6) No order for registration shall be made if the court to which application for registration is made is satisfied that

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52. The judgment must be for a sum of money and have been made in a civil proceeding. An arbitral award enforceable as a judgment in another province may be registered under the legislation. Support orders are not enforceable under the legislation: s. 30(1). The enforcement of maintenance orders is addressed by other federal and provincial legislation: *Divorce Act, 1985*, S.C. 1986, c. 4; *Family Relations Act*, R.S.B.C. 1979, c. 121, Part 4.1. Compensation orders made in criminal proceedings are probably not enforceable under the Act.

53. Rule 54.

54. The application must be made within 6 years after the date of the judgment: s. 31(1).

55. Rule 54 is set out as part of Appendix C to this Report. It also applies to proceedings under the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, which deals with the enforcement of judgments between Canada and the United Kingdom. *See* Schedule 4 of the *Court Order Enforcement Act*, R.S.B.C. 1979, c. 75, as *am. Court Order Enforcement Amendment Act*, S.B.C. 1985, c. 70.

(a) the original court acted either
    (i) without jurisdiction under the conflict of laws rules of the court to which application is made; or
    (ii) without authority, under the law in force in the state where the judgment was made, to adjudicate concerning the cause of action or subject matter that resulted in the judgment or concerning the person of the judgment debtor;
(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident in the state of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court;
(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business in the state of that court or had agreed to submit to the jurisdiction of that court;
(d) the judgment was obtained by fraud;
(e) an appeal is pending or the time in which an appeal may be taken has not expired;
(f) the judgment was for a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court; or
(g) the judgment debtor would have a good defence if an action were brought on the judgment.

The effect of this section was discussed at length in our *Interim Report on Enforcing Judgments from Outside the Province*.[56]

4. Summary

Various provinces, including British Columbia, have adopted reciprocal enforcement of judgments legislation to provide a simpler and more efficient means of enforcing judgments. Once registered in accordance with the legislation, a judgment from outside the province may be enforced like a local judgment. Unfortunately, some parts of the legislation adopt a pre-*Morguard* view and preserve aspects of the common law in its original form for determining what judgments may be registered under it.

The provisions go beyond the common law in erecting barriers to enforcement. The requirement that the appeal period has expired is an example.

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56. LRC 117, 1991.

CHAPTER III THE NEED FOR REFORM

A. Introduction

Currently, it is not always possible to enforce a judgment from outside the province. Even where it is possible, enforcement may be complex and time consuming, and raise problems beyond those often encountered enforcing a local judgment. Arguments in favour of the restrictions on enforcement fall into three general categories: the need to protect residents from distant litigation; the concern that foreign courts may not administer justice; and concerns over sovereignty.

This Chapter examines these arguments critically and then turns to the case that can be made in favour of revising the law.

B. Protection from Distant Litigation

A defendant who resides in one province is not called upon to answer litigation commenced in another, except in certain cases. Formerly, those cases were few,[1] but the *Morguard* case has enlarged their number to an uncertain extent.

Allowing judgments to be enforced from out of province would reflect a totally different policy. Defendants would be called upon to answer a claim wherever in Canada the plaintiff chooses to raise it.

Litigating away from home is prejudicial in a number of respects. There is the loss of a "home court" advantage. There is also the inconvenience and the expense, which may allow the plaintiff to extract a favourable settlement from a defendant who is simply unable to defend the action.

The common law rules concerning personal jurisdiction over a defendant, however, are little more than historical curiosities in a federal state in the closing decade of the twentieth century. For one reason, these rules were developed to define the relationships between different countries before the advent of air

1. Where the defendant has assets in the province where the plaintiff brings the proceeding, it is prudent to answer the plaintiff's claim.

travel and modern communication technology. As Mr. Justice La Forest observed in *Morguard*:[2]

> The approach adopted by the English courts in the 19th century may well have seemed suitable to Great Britain's situation at the time. One can understand the difficulty in which a defendant in England would find himself in defending an action initiated in a far corner of the world in the then state of travel and communications. The *Symon* case, *supra*, where the action arose in Western Australia against a defendant in England, affords a good illustration. The approach of course demands that one forget the difficulties of the plaintiff in bringing an action against a defendant who has moved to a distant land. However, this may not have been perceived as too serious a difficulty by English courts at a time when it was predominantly Englishmen who carried on enterprises in faraway lands. [citations omitted]

The different parts of Canada are now linked together by a sophisticated network of telecommunications. It is not all that difficult to instruct a lawyer who lives in another province by letter, fax or telephone.

Travel across the country is not particularly expensive, at least when compared with the costs of litigation, which are usually substantial wherever it takes place. For several hundred dollars, and in a matter of hours, a person can travel from one coast to the other.[3]

The inconvenience to defendants of distant litigation is an argument that has carried remarkably little weight except to prevent the enforcement of judgments from out of province. A defendant does not have much protection, for example, from an action in a remote part of the province.[4] A resident of Dawson Creek is unlikely to be saved very much in terms of costs if sued in Vancouver instead of Edmonton. Moreover, there is often much greater freedom of movement and commercial contact between major cities across Canada, than between communities within a province.

A successful litigant is also entitled to costs of the litigation. While costs recovered for legal services do not approach anything like a full indemnity, disbursements are another mat-

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2. *Morguard Investments Ltd.* v. *De Savoy*, [1991] 2 W.W.R. 217, 233.
3. Our focus is on sizeable claims. It is doubtful that a defendant would be pursued across the country to recover a small debt. If there is a need to protect "consumers" from distant and expensive litigation, this should be done directly, and not allowed to shape the features of the general law.
4. A notable exception relates to foreclosure proceedings, which must be brought in a court near the land, so that, *e.g.*, a homeowner in Prince George does not have to face a proceeding commenced in Vancouver: *Law and Equity Act*, R.S.B.C. 1979, c. 224, s. 18.3.

ter, and it is possible to recover various expenses incurred as a result of being forced to engage in long distance litigation. Forcing a plaintiff to assume initially the expense of litigation in the defendant's province does not necessarily mean that the defendant will be spared them. The successful plaintiff is ultimately entitled to recover at least some of the expenses incurred during the litigation.

Arguments based on cost or convenience are not, in themselves, sufficiently compelling to justify the current law governing the enforcement of judgments.

C. Suspicion of Foreign Courts

Some commentators have suggested that a reason courts have not been more ready to enforce foreign judgments is a lack of confidence in other judicial systems. A local court is reluctant to be a party to an injustice. This has led naturally to some limited scrutiny of judgments arising from other places:[5]

> Each country has a tendency to protect itself against the intrusion of foreign judgments, to the prejudice of creditors in whose favour the judgments lie. The principle of territorial sovereignty is said to prevent foreign judgments from having any direct operation as such in any of the Canadian provinces. This attitude is principally due to a lack of confidence in other legal systems. It may be difficult for the enforcing court to ascertain the independence and legal ability of the foreign judge, and to assess the reliability of the foreign legal system. This difficulty is reinforced where the countries involved adhere to fundamentally different legal systems and thus may have different concepts of public policy and due process.

Lack of confidence in the judicial systems in other states may explain the current law as it applies to the enforcement of judgments between countries, but for a number of reasons it is an astonishing proposition with respect to judgments emanating from Canadian provinces when, with the exception of Quebec, all of the provinces have basically the same common law.[6]

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5. Castel, "Recognition and Enforcement of Foreign Judgments in Personam and in Rem in the Common Law Provinces of Canada," (1971) 17 McGill L. J. 11.

6. There may, in fact, be a positive duty on the courts of one province to recognize a judgment of a competent court in another province. *See* Herts, "The Constitution and the Conflict of Laws: Approaches in Canadian and American Law," (1977) 27 U. of T. L. J. 1. In *Bank of Montreal* v. *Metropolitan Investigation & Security (Canada) Ltd.*, [1975] 2 S.C.R. 546, the Manitoba Court of Appeal required two banks to deal with a sum of money in a manner contrary to an earlier order of the Quebec Superior Court. The Supreme Court of Canada set aside the Manitoba decision, since it called upon the banks "to be faithless to the competent order" of the Quebec court: at 557 *per* Laskin C.J.C.

Concerns over the independence and legal ability of foreign judges also have no substance in Canada. All judges with jurisdiction to deal with disputes involving significant sums of money are appointed by the federal government under section 96 of the *Constitution Act, 1867*.[7] Judges in the common law provinces have all received the same form of legal training and spent the earlier part of their professional careers working in a legal system very similar to that in the other common law provinces.

Court procedure is also similar from province to province. Canadian courts are equally zealous in ensuring that a plaintiff does not receive a judgment until every effort is made to bring the proceedings to the attention of the defendant, and provide an opportunity to be heard.

Quebec law differs from that of the other provinces. Nevertheless, it adheres to widely recognized notions of fairness in procedure and result. The law in Quebec is not so markedly different that it should be viewed with any apprehension by a common law province.

Differences are even less detectable between the laws of the provinces when the focus is on legislation. Canadian courts apply both provincial and federal legislation:[8]

> These courts are surely bound to execute all laws in force in the Dominion, whether they are enacted by the Parliament of the Dominion or by the Local Legislatures, respectively. They are not mere local courts for the administration of the local laws passed by the Local Legislatures of the Provinces in which they are organized. They are the courts which were the established courts of the respective Provinces before Confederation, existed at Confederation, and were continued with all laws in force, "as if the union had not been made," by 129th sec. of the *British North America Act*....They are the Queen's Courts, bound to take cognizance of and execute all laws, whether enacted by the Dominion Parliament or the Local Legislatures, provided always, such laws are within the scope of their respective legislative powers.

The legislation of the provinces, when it is not identical, is often similar so that even in this regard it is difficult to justify an apprehension over the justice administered in another province. Where liability arises under federal legislation, there is usually no difference at all.[9]

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7. 30 & 31 Vict., c. 3 (U.K.).
8. *Valin* v. *Langlois*, (1879) 3 S.C.R. 1, 19, *aff'd*, (1879) 5 A.C. 115, 119-20.
9. The federal *Interest Act*, R.S.C. 1985, c. I-15 is an exception. Some of its provisions apply in only some provinces.

It should also be observed that the final court of appeal, the Supreme Court of Canada, is the same for all the provinces. While differences in the law exist from province to province, the process of appeal, the persuasive weight of court of appeal authority from other provinces, and the role of the Supreme Court of Canada, result in a harmonizing of the laws of the provinces.

Consequently, wherever in Canada a dispute arises, and whichever court hears the matter, basically the same legal principles will be applied to its resolution. There is no justification for judicial suspicion of judgments from other provinces. Nothing is gained by second-guessing the judiciary of another province.

D. Sovereignty

1. Generally

Much of the current law is based on the principle of sovereignty of states. The few situations where judgments are grudgingly enforced between states are examples of practical necessity and comity. Issues of sovereignty, however, take on a different hue in the context of federalism. The division of powers between the provinces and the federal government has resulted in placing some limitations on what each is capable of doing.

2. Autonomy

Are there features of Canada's constitutional framework that are responsible for the existing rules on enforcing judgments between the provinces? A federal state must balance the rights, responsibilities and authority of its constituent elements, each of which has at least some autonomy within defined spheres of influence. Is the need for autonomy a good reason for retaining the current law?

In Canada, each province has authority over most aspects of civil law, but a province's powers run only as far as its borders. A province is incompetent to legislate extra-territorially,[10] and cannot *expect* its laws to be applied outside its borders. There is a difference, however, between what a province may expect and what respect its laws are due as a consequence of being a part of a federation.

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10. Hogg, *Constitutional Law of Canada* (2d ed., 1985) chap. 13; Edinger, "Territorial Limitations on Provincial Powers," (1982) 14 Ottawa L. Rev. 57; Reese, "Limitations on the Extraterritorial Application of Law," (1978) 4 Dal. L. J. 589.

Autonomy, consequently, suggests a reason for the current law, but it is only part of a larger picture.

3. The Nature Of A Judgment

Arguments in favour of the current law based on sovereignty or autonomy view judgments "as an emanation of governmental authority – rather than merely as resolutions of private disputes."[11] A judgment is, however, both of these things. In that it is an order by an agency of the state and backed by the coercive might of the state, a judgment is an emanation of the state's authority. But this aspect is less significant than the second: most judgments are the resolution of private disputes. Enforcing such judgments can have no impact on a province's sovereignty.

The traditional rules reflect an era when international cooperation was unknown.[12] Whatever relevance sovereignty has in the context of enforcing judgments between countries, it has none in the context of the enforcement of judgments between provinces. There is little need to explore at any length the relevance of sovereignty in a federation. To the extent that the provinces are sovereign states, it is difficult to see how, except on a most abstract level, the enforcement of one province's judgment in another represents any erosion of sovereignty.

4. The Needs Of An Economic Union

The practical reality is that a federation, like Canada, forms because that way it is stronger politically and economically than as a loose association of independent states. Consequently, by its very nature, a federation requires a different approach to the relationship between its constituent units than does an association of independent states. It would seem that, in a federation, the integrity and respect due the various provinces is a factor of much greater significance than the jealous guarding of sovereignty.[13]

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11. Juenger, "The Recognition of Money Judgments in Civil and Commercial Matters," (1988) 36 Am. J. Comp. Law 1, 6.
12. De Winter, "Excessive Jurisdiction in Private International Law," (1968) 17 I.C.L.Q. 706.
13. Even if there is any merit to the position that the easier enforcement of judgments between the provinces will cause practical problems, it may be suggested that no lesser standard is acceptable in a federation. Before the advent of modern modes of travel and communication, the United Kingdom and Australia had largely replaced the common law rules with a summary registration scheme for the interstate enforcement of money judgments.

5. Mareva Injunctions

A further example of the federal perspective adopted by the law arises in the context of the enforcement of judgments. The court has the ability to restrain a defendant from removing his assets from the province. An order to that effect is called a "*Mareva*" injunction. Is it appropriate to prevent a defendant from moving his property from one province to another? The Supreme Court of Canada considered this issue in *Aetna Financial Services Limited* v. *Feigelman*,[14] and refused to make such an order.

In the course of a judgment which foreshadowed *Morguard*, the court observed that it is not always appropriate to treat each province as a foreign state.[15] The court concluded that forbidding a defendant to move his property within Canada was inconsistent with the political and economic structure of the country.[16]

E. Factors Which Favour Easier Enforcement

Arguments that can be raised in support of the current principles of private international law that govern the enforcement of foreign judgments are unconvincing in the context of a federal state. There are, moreover, positive agruments to be raised in favour of a revised approach to enforcing judgments between the provinces.

1. Fairness To Plaintiff

A rule that litigation should take place in the defendant's province overlooks the fact that sometimes it is fair for litigation to take place in the plaintiff's province.

(a) Products Liability

Should a person injured by a defective product be forced to sue the defendant (which is usually a corporation) where it "re-

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14. [1985] 1 S.C.R. 2.
15. In *Gateway Village Investments Ltd.* v. *Sybra Food Services Ltd.*, (1987) 12 B.C.L.R. (2d) 234, 241 (S.C.) Southin J. said that the *Aetna Finance* case did not hold that a court ought never to restrain the removal of assets from one province to another. The import of the case was that it was appropriate to take a national view of jurisdiction when considering whether to grant a *Mareva* injunction. Because it is expensive to enforce a judgment in another province, in *Gateway* the defendant was prevented from removing assets from British Columbia to Alberta.
16. The Court based its conclusion partly on the approach to enforcing judgments within Canada that has been adopted and, perhaps, viewed too generously the then current law for the enforcement of judgments.

sides?" In *Moran* v. *Pyle National (Canada) Ltd.*,[17] a defective light bulb caused the death of an electrician. The manufacturer of the light bulb was sued by the electrician's widow. She brought her action in Saskatchewan, where she lived and where her husband had worked. The defendant carried on its business in Ontario and had no connection with Saskatchewan beyond the fact that its light bulbs found their way to that province. The defendant contested the jurisdiction of the Saskatchewan court to hear the matter but, on appeal to the Supreme Court of Canada, it was held that the Saskatchewan court had jurisdiction:[18]

> By tendering his products in the market place directly or through normal distributive channels, a manufacturer ought to assume the burden of defending those products wherever they cause harm as long as the forum into which the manufacturer is taken is one that he reasonably ought to have had in his contemplation when he so tendered his goods. This is particularly true of dangerously defective goods placed in the interprovincial flow of commerce.

Ironically, until *Morguard*, the law would not allow enforcement of the Saskatchewan judgment in Ontario unless the defendant submitted to the court's jurisdiction.[19] The *Moran* case was identified in *Morguard* by Mr. Justice La Forest as being the kind of case in which a "real and substantial connection" exists.

(b) Defendants Who Live in Different States

Another problem arises when a person has claims against two or more persons who live in different places. Commercial arrangements often involve parties from different provinces.

One policy of the law is to avoid a multiplicity of proceedings. A plaintiff is encouraged to name all defendants in the same action. But if they live in different locations, where should the litigation take place? Suppose the plaintiff brings his action in the province where one defendant resides. A judgment in that action against the other defendants may be unenforceable, unless they submit to the court's jurisdiction. This leaves the plaintiff in the position of having to litigate his claim in each province where the judgment is to be enforced. The cost implications of this position are clear. The prospect of conflicting judgments also exists.

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17. [1975] 1 S.C.R. 393.
18. *Ibid.*, 409.
19. Swan, "The Canadian Constitution, Federalism and the Conflict of Laws," (1985) 63 C.B.R. 271 at 291-292.

The *Morguard* decision eases the position of the plaintiff somewhat. The litigation may now be brought in a place with which it has a "real and substantial connection." The risk remains however that when the plaintiff seeks to enforce the resulting judgment, the courts of the enforcing provinces may not agree that the connection exists.

2. Forum Non Conveniens

During the last decade or so dramatic changes have occurred in the law concerning when a court should accept or decline jurisdiction over a dispute which involves more than one state or territory. The principle involved is called "*forum non conveniens*," and more and more often now, courts are prepared to decline jurisdiction in favour of a court in a province better suited to hear the matter, in the sense that it is a more appropriate forum.[20] If an action is begun in Alberta, for example, but the courts in that province are not as well placed to hear the matter as courts in British Columbia, a defendant can always apply to have the court decline jurisdiction in favour of a British Columbia court.

This is a very simple statement about which much can, and has, been written.[21] The law is in a state of flux and the only observation we would make is that its development is based on the policy that litigation should take place in an appropriate location.

3. Needs Of Commerce

To move from theoretical and legal to practical concerns, the commercial needs of a federation also seem to suggest that greater respect than the current law accords be paid to judgments emanating from other provinces. It is inescapable that the various regions of Canada are not isolated economic markets. The interdependence of the provinces, and the cross-border trade that takes place daily, is a crucial part of modern day Canada and of its economic success. Anything that interferes with that disrupts the commercial life of the country.

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20. Castel, *Canadian Conflict of Laws* (2d ed., 1986) 221-226.
21. *See, e.g.*, North and Fawcett, *Cheshire and North's Private International Law* (11th ed., 1987); Edinger, "Recent Developments in the English Law of Conflicts: The *Spiliada* and *Aerospatiale*," (1989) 23 U.B.C. L. Rev. 373.

The origins of Canada as a political unit were shaped by the anticipation of the benefits that would be derived from the economic union of the provinces. It does not make sense to encourage on one hand interprovincial trade and, on the other, to decline to assist in the enforcement of obligations between residents of the various provinces.

It has been suggested that judgments between *countries* should be easier to enforce:[22]

> ...what is required is that the enforcement of judgments whether rendered locally or abroad be prompt, certain and effective. Security of transactions appears as the underlying policy of major importance in this field of the conflict of laws. Without this security commercial intercourse would be greatly lessened. Apart from these commercial relations, ease in the recognition and enforcement of foreign judgments in general has also become a social question due to the rapidity of means of transportation and the tremendous increase in human migrations.

The same observations apply with even greater force to the enforcement of judgments between the provinces of a federal state such as Canada.

4. Expense

It is often argued that it is unfair to require the judgment debtor to litigate away from home, since this will be more expensive than litigating where he resides. If one looks only to responsibility for initial expenses, that is true. But it is important to realize that a successful judgment creditor is entitled to recover costs from the judgment debtor. The increased costs incurred by requiring litigation to be brought to the judgment debtor end up being the responsibility of the judgment debtor.

Roadblocks to the enforcement of judgments from other parts of Canada result in a decrease in judicial efficiency and an increase in expense to the parties, the judicial system and, in the end, the public. It cannot be demonstrated that these roadblocks contribute at all to an increase in either justice or fairness in the manner in which defendants are called upon to answer, and ultimately satisfy, obligations they owe.

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22. Castel, *supra*, n. 20 at 237-238.

5. Federal Court Of Canada

If there is any need to further demonstrate that the relationship between the provinces of a federation differ from those of countries, one need only look to the Federal Court of Canada. The Federal Court hears disputes involving a federal element.[23] Its territory extends over all of Canada, so that a Federal Court judgment may be enforced anywhere in the country.

Problems have not arisen from the enforcement of Federal Court judgments, which suggests that a national focus for the enforcement of provincial judgments might operate as successfully.

F. Lessons from Other Economic Unions

The problem of enforcing judgments between provinces is not unique to Canada. Other places, such as the United States of America, Australia, the United Kingdom and the European Economic Community, have had to deal with this issue. It is a problem that arises any time autonomous states join together in some kind of economic union, whether as a single country with separate "law districts" (the United Kingdom), a federation like Canada (the U.S.A. and Australia) or a common market (the E.E.C.). All of these unions adopt schemes which reflect a view that the traditional rules for the enforcement of foreign judgments are unsatisfactory.

The approaches which they take to enforcing judgments differ markedly from the position in Canada. In each case, the legislation adopts a philosophy in favour of enforcing judgments, and an approach which greatly simplifies the process of doing so.[24] The United Kingdom has had an effective means of enforcing money judgments between its various parts for over 120 years. Australia has had such a scheme for the past eight decades. Recent legislation adopted in the U.K. and the E.E.C., and proposed for adoption in Australia, all move even further, broad-

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23. *E.g.*, admiralty and aeronautics. *See Federal Court Act*, R.S.C. 1985, c. F-7, ss. 22 and 23; *Quebec Ready Mix Inc.* v. *Racois Construction Inc.*, [1989] S.C.C.D. 3652-03.

24. This is true in every case except the United States, where the initial position – judgments between the states are to receive full faith and credit – has been restricted in deference to constitutional concerns.

ening the situations where judgments may be enforced and simplifying the process of enforcement.[25]

G. Conclusion

In closing it is appropriate to note that virtually all the arguments in favour of reform discussed in this chapter were the subject of comment by the Supreme Court of Canada in *Morguard*. We leave the last words to Mr. Justice La Forest:[26]

> The world has changed since the ... rules were developed in 19th-century England. Modern means of travel and communications have made many of these 19th-century concerns appear parochial. The business community operates in a world economy, and we correctly speak of a "world community" even in the face of decentralized political and legal power. Accommodating the flow of wealth, skills and people across state lines has now become imperative. Under these circumstances, our approach to the recognition and enforcement of foreign judgments would appear ripe for reappraisal. Certainly, other countries, notably the United States and members of the European Economic Community, have adopted more generous rules for the recognition and enforcement of foreign judgments, to the general advantage of litigants.
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> [T]here is really no comparison between the interprovincial relationships of today and those obtaining between foreign countries in the 19th century. Indeed, in my view there never was, and the courts made a serious error in transposing the rules developed for the enforcement of foreign judgments to the enforcement of judgments from sister provinces. The considerations underlying the rules of comity apply with much greater force between the units of a federal state, and I do not think it much matters whether one calls these rules of comity or simply relies directly on the reasons of justice, necessity and convenience...
>
> ...
>
> In any event, the English rules seem to me to fly in the face of the obvious intention of the Constitution to create a single country. This presupposes a basic goal of stability and unity where many aspects of life are not confined to one jurisdiction. A common citizenship ensured the mobility of Canadians across provincial lines, a position reinforced today by s. 6 of the *Canadian Charter of Rights and Freedoms*... In particular, significant steps were taken to foster economic integration. One of the central features of the constitutional arrangements incorporated in the Constitution Act, 1867, was the creation of a common market. Barriers to interprovincial trade were removed by s. 121. Generally, trade and commerce between the provinces was seen to be a matter of concern to the country as a whole...
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> ...

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25. *Working Paper on the Enforcement of Judgments Between Canadian Provinces* (No. 64, 1989) 40 and in Appendix C contained a much more extensive examination of the experience and legislation elsewhere.
26. *Morguard*, *supra*, n. 2 at 234 *et seq.*

These arrangements themselves speak to the strong need for the enforcement throughout the country of judgments given in one province. But that is not all. The Canadian judicial structure is so arranged that any concerns about differential quality of justice among the provinces can have no real foundation. All superior court judges – who also have superintending control over other provincial courts and tribunals – are appointed and paid by the federal authorities. And all are subject to final review by the Supreme Court of Canada...

...

As I see it, the courts in one province should give full faith and credit, to use the language of the United States Constitution, to the judgments given by a court in another province or a territory, so long as that court has properly, or appropriately, exercised jurisdiction in the action.... It seems anarchic and unfair that a person should be able to avoid legal obligations arising in one province simply by moving to another province. Why should a plaintiff be compelled to begin an action in the province where the defendant now resides whatever the inconvenience and costs this may bring and whatever degree of connection the relevant transaction may have with another province? And why should the availability of local enforcement be the decisive element in the plaintiff's choice of forum?

A. Introduction

The *Uniform Enforcement of Canadian Judgments Act* was settled by the Uniform Law Conference at its 1991 meeting in Regina. The version set out below incorporates one or two very minor technical corrections that the procedures of the Conference allow.[1] Several hands have been at work in drafting the Act. The point of departure was draft legislation included in our Working Paper. That was subsequently adapted and refined and, ultimately, its preparation involved drafters from four different Canadian provinces (British Columbia, New Brunswick, Ontario, and Nova Scotia).

B. The *Uniform Enforcement of Canadian Judgments Act*

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT

Contents

Section

1. Definitions
2. Right to register judgment
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7. Interest on registered judgment
8. Recovery of registration costs
9. Judgment creditor's other rights not affected by registration
10. Power to make regulations
11. Application of Act

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1. For example, some changes were made as the French language version of the Act was prepared. As part of this process, it is permissible to make minor alterations to the English language version in order to achieve the highest degree of congruence between the two versions.

Definitions

1. In this Act

"Canadian judgment" means

(a) a final judgment or order made in a civil proceeding by a court of a province or territory of Canada other than [enacting province or territory],

(b) a final order that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than [enacting province or territory] and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction of the province or territory where the order was made, and

(c) an order that is made under section 725 or 726 of the *Criminal Code* (Canada) by a court of a province or territory of Canada other than [enacting province or territory] and that is entered as a judgment in the superior court of unlimited trial jurisdiction of the province or territory where the order was made;

"judgment creditor" means a person entitled to enforce a Canadian judgment;

"judgment debtor" means a person liable under a Canadian judgment;

"registered Canadian judgment" means a Canadian judgment that is registered under this Act.

Right to register judgment

2. (1) Subject to section 5, a Canadian judgment for the payment of money may be registered under this Act for the purpose of enforcing payment of the money unless the judgment is

(a) for maintenance or support, including an order enforceable under the [appropriate Act in the enacting province or territory], or

(b) for the payment of money as a penalty or fine for committing an offence.

(2) A Canadian judgment that contains provisions for the payment of money and also contains other provisions may be registered under this Act in respect of the provisions for the payment of money but may not be registered in respect of the other provisions.

Procedure for registering judgment

3. A Canadian judgment is registered under this Act by paying the fee prescribed by regulation and by filing in the registry of the [superior court of unlimited trial jurisdiction in the enacting province or territory]

(a) a copy of the judgment, certified as true by a judge, registrar, clerk or other proper officer of the court or tribunal that made the judgment, and

(b) the additional information or material required by regulation.

Effect of registration

4. Subject to sections 5 and 6, a registered Canadian judgment may be enforced in [enacting province or territory] as if it were a judgment of, and entered in, the [superior court of unlimited trial jurisdiction in the enacting province or territory].

Time limit for registration and enforcement

5. A Canadian judgment shall not be registered or enforced under this Act

(a) after the time for enforcement has expired in the province or territory where the judgment was made, or

(b) later than [xxx] years after the day on which the judgment became enforceable in the province or territory where it was made.

[xxx – same number of years as for enforcement of judgments of the superior court of unlimited trial jurisdiction in the enacting province or territory.]

Power to stay or limit enforcement of registered judgment

6. (1) The [superior court of unlimited trial jurisdiction in the enacting province or territory] may make an order staying or limiting the enforcement of a registered Canadian judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if

(a) such an order could be made in respect of a judgment of the [superior court of unlimited trial jurisdiction in the enacting province or territory] under [the statutes and the rules of court] [any enactment of the enacting province or territory] relating to creditors' remedies and the enforcement of judgments,

(b) the judgment debtor has brought, or intends to bring, in the province or territory where the judgment was made, a proceeding to set aside, vary or obtain other relief in respect of the judgment,

(c) an order staying or limiting enforcement is in effect in the province or territory where the judgment was made, or

(d) the judgment is contrary to public policy in [the enacting province or territory].

(2) The [superior court of unlimited trial jurisdiction in the enacting province or territory] shall not make an order staying or limiting the enforcement of a registered Canadian judgment on the grounds that

(a) the judge, court or tribunal that made the judgment lacked jurisdiction over the subject matter of the proceeding that led to the judgment or over the judgment debtor under

(i) principles of private international law, or

(ii) the domestic law of the province or territory where the judgment was made,

(b) the [superior court of unlimited trial jurisdiction in the enacting province or territory] would have come to a different decision on a finding of fact or law or on an exercise of discretion from the deci-

sion of the judge, court or tribunal that made the judgment, or

(c) a defect existed in the process or proceeding leading to the judgment.

Interest on registered judgment

7. (1) Interest is payable on a registered Canadian judgment as if it were a judgment of the [superior court of unlimited trial jurisdiction in the enacting province or territory].

(2) For the purpose of calculating interest payable under subsection (1), the amount owing on the registered Canadian judgment is the total of

(a) the amount owing on that judgment on the date it is registered under this Act, and

(b) interest that has accrued to that date under the laws applicable to the calculation of interest on that judgment in the province or territory where it was made.

Recovery of registration costs

8. A judgment creditor is entitled to recover, as if they were sums payable under the registered Canadian judgment, all costs, charges and disbursements

(a) reasonably incurred in the registration of a Canadian judgment under this Act, and

(b) taxed, assessed or allowed by [the proper officer] of the [superior court of unlimited trial jurisdiction in the enacting province or territory].

Judgment creditor's other rights not affected by registration

9. Neither registering a Canadian judgment nor taking other proceedings under this Act affects a judgment creditor's right

(a) to bring an action on the Canadian judgment or on the original cause of action, or

(b) to register and enforce the Canadian judgment under the [*Reciprocal Enforcement of Judgments Act*].

Power to make regulations

10. The Lieutenant Governor in Council may make regulations [rules of court]

(a) prescribing the fee payable for the registration of a Canadian judgment under this Act,

(b) respecting additional information or material that is to be filed in relation to the registration of a Canadian judgment under this Act,

(c) respecting forms and their use under this Act, and

(d) to do any matter or thing required to effect or assist the operation of this Act.

Application of Act

11. This Act applies to

(a) a Canadian judgment made in a proceeding commenced after this Act comes into force, and

(b) a Canadian judgment made in a proceeding commenced before this Act comes into force and in which the judgment debtor took part.

C. Features of the UECJA

In the text that follows we will attempt to describe and explain the features of the UECJA. We will be assisted in this by the commentary prepared by the Uniform Law Conference for promulgation along with the UECJA. It is the practice of the Conference to prepare and issue a commentary as part of every new uniform act it develops. For convenience we refer to this as the "official comment" although it has no special status[2] as an

2. The current rules as to the use of extrinsic aids (particularly legislative history) to assist in statutory interpretation are somewhat hazy. In the United States the use of an "official comment" to a uniform act is a well-accepted practice.

aid to its interpretation by the courts. The format we adopt is first to set out the official comment in relation to a particular provision or issue and then to add our own observations where a gloss or additional explanation is likely to be helpful. The official comment is italicized so it will be easily distinguishable.

1. The General Approach: Full Faith And Credit

Official Comment

Preliminary Comment: Full Faith and Credit: The Uniform Enforcement of Canadian Judgments Act [UECJA] embodies the notion of "full faith and credit" in the enforcement of judgments between the provinces and territories of Canada. It involves rejection of two themes which have, in the past, characterized the machinery for enforcing such judgments.

First it rejects the concept of reciprocity. Where the UECJA has been adopted in province "X," a litigant who has taken judgment in province "Y" may enforce that judgment in province "X" under the legislation whether or not the UECJA has been adopted in province "Y." This stands in contrast to the approach of the Uniform Reciprocal Enforcement of Judgments Act [UREJA].

Second, the Act rejects a supervisory role for the courts of a province or territory where the enforcement of an out-of-province judgment ["Canadian judgment"] is sought. The common law and the UREJA are preoccupied with the question of whether the court which gave the judgment had the jurisdiction to do so. If a Canadian judgment is flawed, because of some defect in the jurisdiction or process of the body which gave it, the approach of the UECJA is to regard correction of the flaw as a matter to be dealt with in the place where it was made.

As a general rule, a creditor seeking to enforce a Canadian judgment in a province or territory which has enacted the UECJA should face no substantive or procedural barriers except those which govern the enforcement of judgments of the local courts.

Our Comments

The Official Comment sets out clearly that full faith and credit is the driving principle of the Act. There is little we can add.

The observation in the final paragraph concerning barriers that may impede the enforcement of Canadian judgments is important. The approach of the UECJA might be contrasted with that of the reciprocal enforcement of judgments provisions[3] which raise barriers to the enforcement of out-of-province judgments that local litigants do not face.

2. SECTION 1 – "CANADIAN JUDGMENT"

Official Comment

Commentary: A central concept of the UECJA is the "Canadian judgment." The first limb of its definition brings in the "conventional" judgment or order of a court of a Canadian province or territory other than the enacting province. The judgment must be final and have been made in a "civil proceeding."

A "Canadian judgment" may also include certain kinds of "deemed judgments" – claims which provincial statutes permit to be enforced as judgments although they have not been the subject of formal litigation in a court. Only final orders of tribunals which exercise a judicial function qualify for enforcement as "Canadian judgments." The definition does not extend to deemed judgments based on a certificate of an administrator stating that money is owed to an emanation of government.

Orders which are enforceable under the third limb of the definition are those made, in the course of a criminal proceeding, in favour of a victim of crime. These orders are authorized by the Criminal Code and are enforceable as civil judgments.

Not all judgments which satisfy the definition of "Canadian judgment" may be registered or enforced under the UECJA. Other limitations are imposed in sections 2 and 5. The other definitions in section 1 are self-explanatory.

Our Comments

A question basic to the formulation of a full faith and credit scheme is identifying the bodies whose orders are to be accorded

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3. *Court Order Enforcement Act*, R.S.B.C. 1979, c. 75, Part 2. This is based on the *Uniform Reciprocal Enforcement of Judgments Act*. Under the legislation, a judgment cannot be made enforceable until the period for appeal has expired in the province where it was given. Moreover, the judgment debtor must be given notice before, or shortly after, the time it becomes enforceable. The creditor seeking to enforce a local judgment faces neither of these barriers. The issue is discussed at length in the *Working Paper on the Enforcement of Judgments Between Canadian Provinces* (No. 64, 1989) at p. 48 *et seq*.

full faith and credit. A group of definitions in the draft legislation set out in the Commission's Working Paper made it clear that the proposed scheme would only accord full faith and credit to money judgments of courts. The scheme expressly excluded claims that are not the result of true court proceedings but are enforceable as "deemed judgments."

The definition of "Canadian judgment" determines the scope of the UECJA. That definition extends the scope of the Act to orders made by non-curial tribunals "in the exercise of a judicial function" that are enforceable as judgments in the province where they originate. This represents a major extension of the full faith and credit concept and it has two implications that should not be overlooked.

In Chapter II we suggested that one reason the law in relation to the enforcement of foreign judgments developed in a restrictive way was due to a suspicion of foreign courts. It reflected a lack of confidence in the judicial systems of other states. These concerns are minimal in Canada since there is an essential similarity in the legal institutions of the Canadian provinces and territories including the qualifications and appointment of their judges. When, however, the notion of full faith and credit also embraces a variety of tribunals whose jurisdiction, composition and competence may be unfamiliar, that justification for a move to a new regime loses some of its force. Adopting the UECJA will involve a leap of faith in any case and the effect of an expansive definition of "Canadian judgment" is to make that leap a bit more demanding.

A second implication concerns the mechanics of registration. The scheme envisages the registration of an out-of-province judgment as a purely administrative and highly mechanical task. A document tendered for registration as a Canadian judgment will likely be received and scrutinized by registry personnel with no formal legal training. A full faith and credit scheme confined to "true" judgments would likely raise few administrative problems. The judgments of most Canadian courts are recognizable, as such, on their face. This is not necessarily true of orders for the payment of money made by tribunals. In particular, where a creditor seeks to register a deemed judgment, it will not always be obvious that it is based on an order made in the exercise of a judicial function. The "intake procedure" for such documents requires careful consideration.

On the other hand, one must be careful not to overstate the difficulties that might result from the expansive definition. The requirement that the tribunal exercise a judicial function suggests that the kinds of bodies swept into the definition will be those that provide for the resolution of disputes in relatively narrow and specialized fields. These orders will likely be confined to their own province or territory and not migrate across provincial boundaries for the purposes of enforcement. The vast majority of orders sought to be enforced under the legislation are likely to be "true" judgments. The integrity and workability of the scheme should not be significantly affected by its generous scope.

3. Section 2: What Can Be Registered?

Official Comment

Commentary: Only judgments for the payment of money may be registered. A judgment which also provides for matters other than the payment of money may be registered, but the registration is only effective to the extent that the judgment calls for the payment of money. The effect of registration is set out in section 4.

Not all Canadian judgments for the payment of money may be registered under the UECJA. Section 2(1) sets out two kinds of judgments which are excluded from registration.

Orders for maintenance and support are excluded. A well-developed scheme for their interjurisdictional enforcement is already in place.

The exclusion of judgments for fines and penalties carries forward the current law. They are not presently enforceable either through an action on the judgment or under reciprocal enforcement of judgment legislation.

Our Comments

The exclusion of judgments for the payment of fines or penalties, and judgments for maintenance or support echo the proposals set out in our Working Paper. Those proposals, however, would have narrowed the scope of the full faith and credit scheme further denying registration to two further categories of judgments. One category was judgments for taxes. The exclusion of these judgments merely carried forward a long standing common law rule restricting their enforcement between jurisdictions.

The Working Paper observed that to permit enforcement of these judgments would offend, at least symbolically, notions of sovereignty.[4]

The other category of judgments that would have been excluded by our earlier proposals are those for smaller amounts of money. In the Working Paper we observed:[5]

> The commercial nature of the new legislation also suggests another exception should be made to the kinds of judgments that are to be registered under it. One policy of the law is to prevent litigation over small debts from becoming overly complex or expensive. For that reason, in British Columbia, the *Small Claim Act* provides that claims for under $5000 [now $10000] may be brought following a simple procedure. In most cases, it is unnecessary to engage a lawyer to bring or defend a claim for a small debt. Moreover, the successful party is not entitled to costs he incurs in taking judgment (other than those for filing and serving the Small Claim's Summons). In keeping with this policy, a plaintiff who brings a claim in the Supreme Court that could have been heard by a Small Claims Court is usually not entitled to recover his costs.
>
> It would be inconsistent with the policy described above to require a defendant to assume the costs and inconvenience of defending a claim for a small debt wherever the plaintiff chooses to bring his action. Moreover, the object of facilitating commercial ends does not require legislation of this nature to recover small debts. For these reasons, we think that judgments that may be registered under the new legislation must satisfy a threshold value.

The Working Paper suggested that the limits placed on the jurisdiction of the Provincial Court under the *Small Claims Act* might identify an appropriate monetary threshold.

4. Sections 3 and 4: Procedure For Registration And Its Effect

Official Comment

Commentary: Section 3 sets out the mechanics of registering a judgment under the UECJA. If more detailed guidance is desirable this may be done by regulation. See section 10.

Commentary: Section 4 describes the effect of registration. It embodies the central policy of the UECJA that Canadian judgments from outside the enacting province or territory should be enforce-

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4. Working Paper at 44. The Working Paper also suggested that there may not be the political will for the interjurisdictional enforcement of tax judgments. The Uniform Law Conference promulgated a statute designed to do that in 1966, but no province ever proceeded to enact it. *See Uniform Reciprocal Enforcement of Tax Judgments Act.* The Act was withdrawn in 1980.
5. Working Paper at 46.

able as if made by a superior court of the enacting province or territory.

Our Comments

On registration of a Canadian judgment, the full array of collection remedies becomes available to the judgment creditor. These include the remedies created or regulated by the *Court Order Enforcement Act* such as the garnishment of debts, and seizure and sale of the judgment debtor's goods or land.[6] Equitable remedies such as receivership would also be available.

The creditor will also, however, be subject to the same limitations in the enforcement of the judgment that would apply if it were a local judgment. These include observance of the exemptions from execution[7] and the obligation to share, with other creditors, the proceeds of certain enforcement measures as required by creditors' relief legislation.[8]

5. Section 5: Limitation Periods

Official Comment

Commentary: The limitation laws of most provinces adopt a different limitation period to govern the enforcement of "foreign" judgments than that which governs local judgments. "Foreign" judgments are usually subject to a shorter limitation period. Section 5 embodies the policy that Canadian judgments should be treated no less favourably than local judgments of the enacting province or territory. Thus Canadian judgments should not be subject to any shorter limitation period than local judgments.

In setting a limitation period for the enforcement of judgments under the UECJA section 5 adopts a dual test. First, enforcement proceedings must be brought within the limitation period applicable to local judgments, with time running from when the judgment was made. Second, proceedings on the judgment must not have become statute barred through the operation of a limitation period in the place where it was made.

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6. *Supra*, n. 3, Parts 1 and 3.
7. *Ibid.*, ss. 4(4), 5, 65 to 71.
8. *See Creditor Assistance Act*, R.S.B.C. 1979, c. 80.

Our Comments

The dual test for establishing a limitation period for the enforcement of a Canadian judgment is virtually identical with the one that we adopted in the *Interim Report on Enforcing Judgments from Outside the Province*.[9] The bracketed portion of paragraph (b) should be completed so it provides for a limitation period of 10 years.

6. Section 6: Stay Of Enforcement

Official Comment

Commentary: Section 6 addresses the issue of the extent to which the courts of the enacting province or territory may intervene to stay or limit the enforcement of a Canadian judgment.

At common law, a local court whose assistance is sought in the enforcement of a foreign judgment may decline to give that assistance where it believes the foreign judgment is somehow flawed. In this context, a flaw might involve a lack of jurisdiction in the foreign court over the defendant or the dispute. It might, in some cases, involve the local court having a different view of the merits of the decision. A flaw might also include some defect in the process by which the foreign judgment was obtained such as a breach of natural justice or where there is a suggestion of fraud.

Allowing the local court to inquire into such matters may be appropriate where the judgment emanates from a truly "foreign" place. It is quite inappropriate in Canada as it puts the courts of one province in the position of supervising the actions of the courts of another province. The Common law approach cannot co-exist with the full faith and credit concept.

The UECJA expressly abrogates the common law approach. Section 6(2) stipulates that none of the "flaws" described above provide grounds for staying or limiting the enforcement of a Canadian judgment. The proper course of a judgment debtor who alleges that the judgment is flawed is to seek relief in the place where the judgment was made, either through an appeal or a further application to the court or tribunal which made the judgment.

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9. Law Reform Commission of British Columbia, *Interim Report on Enforcing Judgments from Outside the Province* (LRC 117, 1991) 31.

The UECJA does recognize that there are other circumstances which might justify staying or limiting the enforcement, such as where the judgment is truly flawed, and the judgment debtor is taking steps to obtain relief in the place it was made. This is provided for in section 6(1)(b). The judgment debtor is likely to have a stronger claim for a stay if enforcement of the judgment has also been stayed in the place where it was made. See section 6(1)(c).

The policy of assimilating the enforcement of Canadian judgments to that of local judgments requires that the judgment debtor be entitled to take advantage of any limitations which the law of the enacting province or territory may impose with respect to the enforcement of local judgments. This might include, for example, a power in the local court to order payment by instalments. Section 6(1)(a) clarifies the power of the local court to make orders of this character which limit the enforcement of a Canadian judgment.

The court may also order a stay with respect to a judgment which offends the public policy of the enacting province or territory. This exception to enforcement carries forward the policy of the current law.

An order made under section 6(1) staying or limiting enforcement may be made for a temporary period and subject to any terms which may be necessary to protect the judgment creditor's position. If an order is made under paragraph (b), terms might be imposed to ensure that the judgment debtor proceeds expeditiously. The court may, for example, set time limits or require the posting of security.

Our Comment

Section 6 is essential to the integrity of the full faith and credit scheme. The provision and the official comment are based on the policy and analysis contained in our Working Paper.

7. Sections 7, 8 and 9: Interest, Costs and Saving of Rights

Official Comment

Commentary: Section 7 provides that a registered judgment will earn interest as if it were a local judgment. The principal amount

of the judgment is calculated by including post judgment interest that has accrued before registration.

Commentary: Costs and disbursements incurred in the registration of a Canadian judgment are recoverable.

Commentary: A judgment creditor is not required to elect irrevocably between options for enforcing a Canadian judgment. Section 9 preserves the right of the judgment creditor to employ the UECJA or to rely on common law methods of enforcement. There is no reason to limit the judgment creditor's options, so long as the judgment is satisfied only once.

It is contemplated that the provinces and territories will retain legislation for the reciprocal enforcement of judgments. While this legislation will be overtaken by the UECJA with respect to Canadian judgments it will still be necessary as a vehicle for the enforcement of judgments, on a reciprocal basis, with non-Canadian jurisdictions.

Our Comments

The UECJA's treatment of these issues generally parallels the proposals that we made in the Working Paper.

8. SECTION 10: REGULATIONS

Official Comment

Commentary: The regulation making power in section 10 is self-explanatory.

9. SECTION 11: APPLICATION

Official Comment

Commentary: The application provision permits the retrospective application of the UECJA to some judgments. It may be unfair to enforce, on a full faith and credit basis, a judgment made in a proceeding commenced before the UECJA came into force. This could occur where a resident of the enacting province relied on well-founded legal advice to not respond to distant litigation since any resulting judgment would not (according to the law in force at the time) be enforceable outside the place where it was made. On the other hand, if that resident took part in the foreign proceeding

there is little reason to deny the plaintiff the right to enforce the judgment under the UECJA.

Our Comments

Section 11 has no counterpart in our Working Paper proposals. We believe it adopts the correct approach to the issues of application and transition.

CHAPTER V

REFORM

A. Adoption of the UECJA

We have no hesitation in recommending that British Columbia adopt and enact the *Uniform Enforcement of Canadian Judgments Act* promulgated by the Uniform Law Conference of Canada. There are issues on which, if the decision was wholly ours, we might have arrived at conclusions different from those of the Conference. Those differences are not, however, so great as to justify a diminution of the consensus that seems to have emerged through the national processes described in this Report's introductory chapter. Moreover, there are ways in which concerns can be met that do not involve a departure from uniformity.

These include non-contentious alterations necessary to accommodate the UECJA within the framework of legislation that exists in this province and to supplement it where necessary. Regulations can be made to clarify detailed aspects of its operation and provide for the gathering of accurate information on its use. This will, after a period, allow its operation to be evaluated. None of these steps involve a departure from the spirit of uniformity.

The Commission recommends:

1. The Uniform Enforcement of Canadian Judgments Act [UECJA] promulgated by the Uniform Law Conference of Canada should be adopted in British Columbia.

B. Legislative Distribution

1. COURT ORDER ENFORCEMENT ACT

The *Court Order Enforcement Act*[1] addresses the enforcement of both local and foreign judgments. The current reciprocal enforcement of judgments legislation is part of that Act and we see no reason to depart from that pattern of legislative distribution. The UECJA, suitably renumbered, should form a separate "part" of the Act.

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1. R.S.B.C. 1979, c. 75.

One approach would be simply to add it as Part 2.3 of the Act.[2] The effect, however, would be to aggravate what is already an untidy accumulation of legislation and subject the uniform provisions to the indignity of decimal numbering. This concern led us to suggest, in the Working Paper, a substantial rearrangement of the relevant legislation with the result that the existing reciprocal provisions would be integrated with the Act in a way that parellels the treatment of the Canada/U.K. Convention.[3]

We have given this point further consideration and have concluded that, on balance, it would probably be preferable to leave any substantial rearrangement of the Act to the next statute revision when some rationalization of the *Court Order Enforcement Act* is likely to occur in any event. We do, however, commend the approach outlined in the Working Paper to the attention of legislative counsel when structural changes to the *Court Order Enforcement Act* are under review.

In the meantime, we recommend that the simpler approach of designating the UECJA provisions as Part 2.3 should be adopted in the hope that any resulting inelegance will be with us for only a short time.

The Commission recommends:

2. The provisions of the UECJA should form a new Part 2.3 of the Court Order Enforcement Act with the title "Enforcement of Canadian Judgments." The provisions should be appropriately modified or completed in respect of

(1) section numbering and cross-references

(2) substituting of "this Part" for "this Act"

(3) the square bracketed references.

3. When, as part of the next statute revision, the Court Order Enforcement Act is under review, consideration should be given to a rearrangement of the reciprocal enforcement provisions (currently Part 2) in the manner proposed in the Working Paper.

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2. Part 2 provides for the reciprocal enforcement of judgments; Part 2.1 with foreign judgments based on asbestos injuries and Part 2.2 with judgments enforceable under the Canada/United Kingdom Convention on Reciprocal Recognition and Enforcement of Judgments.

3. In particular, the *Working Paper on the Enforcement of Judgments Between Canadian Provinces* (No. 64, 1989) proposed that the bulk of what is now Part 2 of the Act be relegated to a Schedule with the body retaining, in a new Part 2.3, only the provisions necessary to give that Schedule force and effect. This would have freed the designation Part 2 which would allow it to be used for the Canadian judgment provisions.

2. Rules Of Court

(a) Rule 54

A further enactment that touches on foreign judgments is the *Rules of Court*.[4] Rule 54 sets out the procedure to be followed for registering a judgment under Part 2 of the *Court Order Enforcement Act*. It also applies to proceedings under the Canada/U.K. Convention[5] which concerns the enforcement of judgments between Canada and the United Kingdom.

Rule 54 should be revised to harmonize its provisions with those of Part 2 of the *Court Order Enforcement Act*. They currently conflict in several respects. For example, the Rule says that an application for registration may be made without notice to the judgment debtor.[6] The Act, however, permits an application without notice only in two cases. Either the defendant must have been personally served with the court documents that led to the judgment or have submitted to the court's jurisdiction.[7] The Rule also requires that an affidavit accompany the application for registration of the judgment. The affidavit must verify service on the defendant of the court documents for the earlier proceedings. But there are situations where a judgment is enforceable even where the defendant was not served. An example is where the judgment debtor has fully participated in the original proceeding or the judgment debtor initiated the proceeding. This aspect of the affidavit requirement is not supported by the legislation.

It is also evident that Rule 54 draws unnecessary distinctions between the procedure to register judgments under Part 2, and the procedure to register judgments under the Canada/U.K. Convention. These distinctions seem difficult to justify and a greater degree of procedural harmony is called for.

At one stage we considered developing Recommendations to revise Rule 54 in the context of this Report, and some progress has been made in doing this. It has become clear, however, that revising Rule 54 to meet the concerns that have been identified is an exercise that raises issues beyond the scope of this Report and

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4. *See* Appendix C.
5. *See* Schedule 4 of the *Court Order Enforcement Act*, *ibid.*, *as am. Court Order Enforcement Amendment Act*, S.B.C. 1985, c. 70. For the purposes of this discussion, we are concerned only with the operation of Rule 54 as it applies to Part 2 of the *Court Order Enforcement Act*.
6. Rule 54(4).
7. S. 31(2).

might delay its production. We therefore propose to deal with Rule 54 as a distinct topic. This will entail appropriate consultation with the Attorney General's Rules Committee, who have indicated that Commission involvement in this area would be welcome.

(b) New Rules

The Recommendations made in this Report will give rise to a need for new Rules to deal with matters arising out of the enactment of the UECJA. For example, in Recommendation 6 reference is made to subordinate legislation which would define an "intake procedure." We would expect that procedure to be defined, at least in part, by the *Rules of Court*.

An additional matter on which we believe a new Rule is required is to clarify the procedure for cancelling the registration of a purported Canadian judgment. From time to time, documents will be registered that ought not to be enforced under the full faith and credit scheme. The reason that a particular judgment should not be enforced may be because it does not satisfy the definition of "Canadian judgment."[8] Alternatively, section 2 may not allow registration of the judgment.[9] The extended definition of "Canadian judgment" enhances the likelihood that judgments in the first group may be registered. It is important that the machinery for dealing with them is clear and effective.

The Commission gave this question passing consideration in the Working Paper.[10] We tentatively concluded that the power to stay enforcement proceedings[11] was sufficient to deal with the problem and no specific provision was necessary. The language of the draft legislation set out in the Working Paper probably justified that view. The drafting of the UECJA is somewhat different. We are less confident that it would be safe to rely wholly on section 6 to deal with unauthorized registrations.[12] Legislation should provide a more explicit solution.

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8. It may be an order of a tribunal that does not exercise a judicial function.
9. For example, a judgment for a penalty or fine.
10. At p. 53.
11. In a provision comparable to s. 6 of the UECJA.
12. The difficulty we see is that s. 6 is directed toward limiting the enforcement of a "registered Canadian judgment." If the judgment debtor's complaint is that the order which has been registered is not, in law, a Canadian judgment there may be nothing on which the powers of s. 6 can be founded.

The Commission recommends:

4. New Rules of Court should be promulgated

(a) to provide, to the extent appropriate, for the intake procedure referred to in Recommendation 6, and

(b) to add a new subrule that clarifies the right of a purported judgment debtor to apply to cancel the registration, under the UECJA provisions, of an order that does not qualify for registration.

C. Damages for Unauthorized Registration

The previous recommendation addressed one aspect of the unauthorized registration of a purported Canadian judgment – a mechanical task of getting the registration cancelled. But cancellation of the registration may not make the judgment debtor whole. The registration may have resulted in significant loss before matters could be put right. This raises the question of what, if any, compensation the judgment debtor might claim. The relevant body of law is that which concerns abuse of legal process.

While the Canadian law on this topic is not well developed, one British Columbia case illustrates the circumstances in which the remedy is available. In *Guilford Industries Ltd.* v. *Hankinson Management Services*,[13] a claim filed under builders lien legislation was "totally without merit." The lien claimed an extravagant sum and was unrelated to the true dispute between the parties. The court observed:[14]

> In the case at bar, the lien proceedings are completely devoid of any legal foundation and were initiated for an unlawful purpose, namely, to obtain a settlement by means of legal "blackmail."
>
> While the courts must protect the right of every resident "to have his day in Court" where there is some evidence, however slight, on which a claim might be supported, the courts will not permit the processes of the law to be used for ulterior purposes. This Court cannot shut its eyes to the fact that mechanics' liens, lis pendens and garnishing orders are sometimes, though not often, used by unscrupulous persons to achieve results which could not otherwise be obtained. The courts will be quick to curb such acts and, hence, protect the sanctity of the courts and processes provided by law for the achievement of lawful purposes.

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13. [1974] 1 W.W.R. 141 (B.C.S.C.); *see also Deborah Resources Ltd.* v. *McDonald's Restaurants of Canada Ltd.*, [1991] B.C.D. Civ. 3560-02.
14. *Ibid.*, at 149.

The court characterized the filing of the lien as an abuse of process and awarded damages accordingly.

The observations set out above are broad enough to cover many cases in which an unauthorized judgment may be filed under the UECJA provisions. Does it go far enough? *Guilford Industries* and the authorities on which it relies are clear that it is the defendant's "improper purpose" that is the key to liability. Even where a cause of action and legal process is well founded, pursuing it for an improper purpose may constitute an abuse of process that will result in liability.[15]

A requirement on the injured party to demonstrate that the wrongdoer had an improper purpose is a significant burden to overcome. It may put too high an onus on the injured party, at least in cases where the proceeding is without foundation. In those cases it is difficult to see why actual or constructive knowledge that the proceeding is without foundation, coupled with the foreseeability of damage, should not be sufficient to create liability.

It was this concern that led us to propose, in the Working Paper, a statutory remedy in relation to unauthorized registration. A provision of the draft legislation stated:

> **38.** The judgment debtor is entitled to compensation for reasonably foreseeable damages suffered as a result of enforcement proceedings brought by the judgment creditor on a registered judgment where the judgment creditor knew or ought to have known of the existence of a fact or circumstance which prohibited enforcement.

We remain concerned that the law should provide a clear remedy in these cases. We do not believe that the legislation would depart from either the spirit or the letter of uniformity if it included a similar provision.[16]

The Commission recommends:

5. A provision should be added to the Court Order Enforcement Act to clarify that the judgment debtor has a right to compensation for reasonably foreseeable damages suffered as a result of the registration of an order that does not qualify for registration, or enforcement proceedings based on it, where the judgment

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15. Although it is difficult to say anything with certainty, given the paucity of case law.
16. Our examination of this issue, as brief as it was, has led us to consider the desirability of undertaking, at some future date, a wider project on the improper use of legal process generally.

creditor knew or ought to have known that the order did not qualify for registration.

D. Statistics and Review

The experience accumulated under the reciprocal enforcement of judgments legislation and the common law machinery for the enforcement of judgments between provinces gives us a degree of insight into the way a full faith and credit enforcement regime, restricted to judgments only, would operate. There is little or no experience with the interprovincial enforcement of money awards made by non-curial tribunals. It is likely that a full faith and credit scheme which embraces them will have unpredictable elements.

Also, there are certain kinds of judgments which for reasons either of law or practicality have tended not to be enforced between provinces. A judgment based on tax owed by the judgment debtor is not enforceable either under the reciprocal enforcement of judgment legislation or by an action on the judgment. That judgment would, however, be registrable and enforceable under the UECJA provisions. Judgments in respect of small claims are seldom enforced interprovincially simply because the cost of doing so makes it impractical. The procedures contemplated by the UECJA provisions, however, will make their enforcement relatively simple and inexpensive and this will likely increase the frequency of their interprovincial enforcement.

We believe that, from the outset, statistics should be gathered on the use of the UECJA provisions so that any anomalies or problem areas may be discovered quickly. Such statistics may also form the basis for a review of the Act after if has been in force for some time.

Section 10(b) of the UECJA sets out the power to make regulations:

> Respecting additional information or material that is to be filed in relation to the registration of a Canadian judgment under this Act.

This power could be used to make a regulation which provides that as part of the "intake procedure" the person seeking registration must provide information for statistical purposes.

There are two issues on which we think the gathering of statistics is particularly important. The first concerns judgments for taxes owed by the judgment debtor. In the Working Paper we proposed that these judgments should be excluded from the enforcement scheme. That particular proposal did not receive universal acclaim. One commentator wrote:[17]

> [T]he Working Paper's proposals ... do not seek to alter the rule by which foreign judgments for the payment of taxes ... are rendered unenforceable. This restriction is based on authorities and reasoning which are at least as antiquated as the cases and considerations which support the rule precluding enforcement of judgments of foreign courts to which the defendant did not submit. Lord Mansfield's statement that "no country ever takes notice of the revenue laws of another" is of dubious applicability among the Canadian provinces, yet although the Working Paper purports to take up this issue it does not engage in any serious consideration of it. This is particularly unfortunate in light of the fact that courts are beginning to reconsider the judge-made bar to enforcement of foreign tax claims. [Also] ... the Commission seeks to ground its refusal to recommend elimination of the bar to tax ... claims on a more principled basis:
>
> > Judgments for taxes or penalties represent an assertion of one province's authority in another. Enforcement of these judgments does offend, at least symbolically, notions of sovereignty.
>
> This concern with symbols of sovereignty conflicts with the focus on the needs of an economic union which permeates the rest of the Working Paper. Moreover, the Commission rejected this reason when it evaluated the general rule that denies enforcement of judgments in actions to which the defendant did not submit.... It seems strange that sovereignty can be dismissed as a reason for refusing to enforce "regular" judgments between provinces, yet offered up as a justification for refusing to enforce tax ... claims. The economic arguments which are deployed throughout the rest of the Working Paper are inexplicably absent when the Commission comes to consider the enforcement of ... revenue judgments.

These arguments have considerable merit so long as a significant number of provinces adopt the full faith and credit principle. The Uniform Law Conference appeared to find them persuasive and

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17. V. Black, "The Enforcement of Judgments Between Canadian Provinces," (1990) 69 Can. B. Rev. 813, 816-17. Authorities cited include: *Holman* v. *Johnson*, (1775) 1 Cowp. 341, at p. 343, 98 E.R. 1120, at p. 1121 (K.B.); *Re Sefel Geophysical Ltd.*, (1988) 62 Alta. L. R. 193 (Q.B.); S.K. Harding, "*Re Sefel Geophysical Ltd.*: A Canadian Approach to Some Specific Problems in the Adjudication of International Insolvencies," (1989) 12 Dal. L.J. 412. The observations made by the commentator in relation to tax judgments are equally applicable to judgments for fines or penalties.

the UECJA permits the enforcement of tax judgments under the scheme.

While we do not advocate any departure from the position adopted in the UECJA provisions, we do think this aspect of its operation should be carefully monitored. If experience demonstrates that significant numbers of tax judgments enforced in British Columbia emanate from provinces that have not adopted the uniform provisions, this aspect might require reconsideration. While we reject the need for reciprocity in the enforcement of judgments between non-government entities, it may have a role to play in relation to tax judgments.

The other area which we believe calls for special monitoring is that of small claims. Again, in the Working Paper, we recommended that they should be excluded from the enforcement scheme entirely. One concern that led us to make that proposal was the possibility that some institutional creditors, that carry on business nationally, might adopt a policy of centralizing their collection of small claims in a particular court in a particular province. The result could be that, in small claims matters, British Columbia residents could be forced to answer distant litigation more frequently than is now the case. These concerns might not materialize, but we believe it would be desirable to, at least initially, recognize their possibility and gather information so any trends of this kind can be identified at an early stage.

With proper information gathering procedures, after a period of time, say five years, it will be possible to do a fairly thorough evaluation of the operation of the UECJA provisions. We believe it is important that such an evaluation should be done. The review should also include a survey of the extent to which the other provinces and territories of Canada have adopted the UECJA.

As part of that review the need for changes to the UECJA provisions will no doubt be carefully examined. The response to that need for change may well depend on the extent of adoption of the UECJA in other provinces and the ways of maintaining uniformity. It should always be remembered that the same national institutions that brought about the creation of the UECJA are also available to facilitate uniform amendments if experience demonstrates that they are required.

The Commission recommends.

6. Regulations or Rules made under the Act should provide for an "intake procedure" which permits the gathering of accurate statistics concerning judgments registered under the scheme. In particular those statistics should identify

(a) the place where the judgment originates

(b) the identity of the court or tribunal

(c) the amount of the judgment

(d) whether the judgment is in respect of tax owed by the judgment debtor to the government of the province or territory where the judgment originates, or to an agency of that government

(e) any pattern of registrations that suggests that an institutional plaintiff has centralized its collection of small claims outside British Columbia.

7. After the Act has been in force for five years its operation should be reviewed. If any need for changes to the Act emerge from the review:

(a) the value of those changes should be weighed carefully in the light of the extent to which other provinces and territories have adopted the UECJA and the desirability of maintaining whatever degree of uniformity has been achieved, and

(b) if the Act has been widely adopted, the Uniform Law Conference should be requested to reexamine those aspects of the Act that appear to call for changes.

CHAPTER VI

SUMMARY AND LIST OF RECOMMENDATIONS

A. Summary

In this Report the Commission recommends that the province adopt the principle of "full faith and credit" in the enforcement of judgments from other Canadian provinces and territories. These recommendations are the culmination of a process that began with the publication of our Working Paper in 1989, and included a national meeting of Attorneys General and Justice Officials and a reference to the Uniform Law Conference of Canada. In 1991 the Conference promulgated the *Uniform Enforcement of Canadian Judgments Act* which embodies the full faith and credit principle. We recommend its adoption.

The national processes were invoked in the hope that British Columbia would be joined by other Canadian jurisdictions in adopting a scheme of this kind for the enforcement of Canadian judgments. It is foreseeable that for a time all provinces may hesitate, each waiting for the other to make the first move in adopting the UECJA. We urge that British Columbia should not be reluctant to make that first move, not only because it has been the catalyst for this process, but because it is in the best interests of the province and the country to do so.

The Working Paper suggested that British Columbia should be prepared to "go it alone" if necessary. This prompted one commentator to observe:[1]

> [The Working Paper] proposals might appear to be the equivalent of a one-sided dropping of tariff barriers: extra-provincial judgments would be easily enforced in British Columbia, yet British Columbia plaintiffs would still encounter the existing hurdles when faced with actions against defendants in other provinces ... [T]he metaphor of a one-sided reduction of tariff barriers is not one which the Law Reform Commission accepts, and with this I agree. Existing restrictions on enforcement of judgments within Canada represent a policy of mutual assured destruction, and the appropriate course is unilateral disarmament.

The commentator's last metaphor is one we find appealing. The experience of global politics in recent years is that unilateral gestures have been highly successful in bringing about new and

1. V. Black, "The Enforcement of Judgments Between Canadian Provinces," (1990) 69 Can. B. Rev. 813, 815.

closer relationships between nations. The provinces and territories of Canada should be equally responsive.

B. List of Recommendations

This Report makes the following Recommendations:

1. The Uniform Enforcement of Canadian Judgments Act [UECJA] promulgated by the Uniform Law Conference of Canada should be adopted in British Columbia. **[page 51]**

2. The provisions of the UECJA should form a new Part 2.3 of the Court Order Enforcement Act with the title "Enforcement of Canadian Judgments." The provisions should be appropriately modified or completed in respect of

(1) section numbering and cross-references

(2) substituting of "this Part" for "this Act"

(3) the square bracketed references. **[page 52]**

3. When, as part of the next statute revision, the Court Order Enforcement Act is under review, consideration should be given to a rearrangement of the reciprocal enforcement provisions (currently Part 2) in the manner proposed in the Working Paper. **[page 52]**

4. New Rules of Court should be promulgated

(a) to provide, to the extent appropriate, for the intake procedure referred to in Recommendation 6, and

(b) to add a new subrule that clarifies the right of a purported judgment debtor to apply to cancel the registration, under the UECJA provisions, of an order that does not qualify for registration. **[page 55]**

5. A provision should be added to the Court Order Enforcement Act to clarify that the judgment debtor has a right to compensation for reasonably foreseeable damages suffered as a result of the registration of an order that does not qualify for registra-

tion, or enforcement proceedings based on it, where the judgment creditor knew or ought to have known that the order did not qualify for registration. **[pages 56-57]**

6. Regulations or Rules made under the Act should provide for an "intake procedure" which permits the gathering of accurate statistics concerning judgments registered under the scheme. In particular those statistics should identify

(a) the place where the judgment originates

(b) the identity of the court or tribunal

(c) the amount of the judgment

(d) whether the judgment is in respect of tax owed by the judgment debtor to the government of the province or territory where the judgment originates, or to an agency of that government

(e) any pattern of registrations that suggests that an institutional plaintiff has centralized its collection of small claims outside British Columbia. **[page 60]**

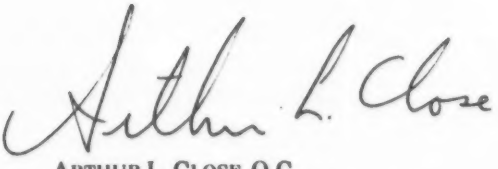
7. After the Act has been in force for five years its operation should be reviewed. If any need for changes to the Act emerge from the review:

(a) the value of those changes should be weighed carefully in the light of the extent to which other provinces and territories have adopted the UECJA and the desirability of maintaining whatever degree of uniformity has been achieved, and

(b) if the Act has been widely adopted, the Uniform Law Conference should be requested to reexamine those aspects of the Act that appear to call for changes.
[page 60]

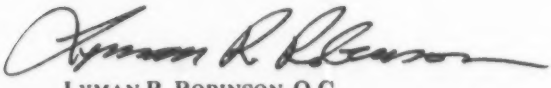
C. Acknowledgments

We wish to express our gratitude to all of those individuals who, directly or indirectly, participated in the processes which led to the creation of the *Uniform Enforcement of Canadian Judgments Act*. This includes those who commented on the *Working Paper on the Enforcement of Judgments Between Canadian Provinces*, the Ministers of Justice and Attorneys General and the delegates and executive of the Uniform Law Conference of Canada. They brought a national perspective to this important topic.



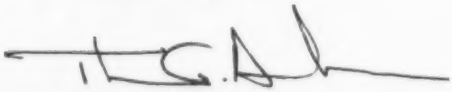
ARTHUR L. CLOSE, Q.C.

HON. RONALD I. CHEFFINS, Q.C.



LYMAN R. ROBINSON, Q.C.

PETER T. BURNS, Q.C.



THOMAS G. ANDERSON

APPENDIX A

RESOLUTION OF ATTORNEYS GENERAL AND MINISTERS OF JUSTICE

NIAGARA-ON-THE-LAKE, 1990

Resolution concerning the enforcement of judgments between Canadian provinces and territories:

WHEREAS:

there is great cost, inconvenience, uncertainty and other disadvantages associated with the current law governing the enforcement of judgments from one province or territory in another, and

having regard to the economic interdependence of the various regions of Canada there is a need to establish an appropriate legal framework for the enforcement of judgments between provinces and territories.

RESOLVED:

The Uniform Law Conference be requested to develop immediately modern legislation respecting the enforcement of judgments between provinces and territories, in the form of one or more uniform statutes, based, to the extent appropriate, on the Law Reform Commission of British Columbia's

(i) Working Paper on Enforcement of Judgments Between Canadian Provinces, and

(ii) Study Paper on Court Jurisdiction, and

Jurisdiction of Courts (Cross-Vesting) Act, 1987 (Australia).

Such legislation would:

- allow a judgment from one part of Canada to be accorded full faith and credit in another part of Canada,
- establish rules for the service of court process outside the territorial boundaries of the court,
- establish rules for dealing with issues or matters that affect more than one Canadian province or territory, as to when a court should accept, and when it should decline, jurisdiction to hear a matter,
- establish
  - (i) a procedure for transferring jurisdiction to the courts of a province or territory to deal with a proceeding commenced in another province or territory,
  - (ii) rules for determining when such a procedure should be invoked, and
  - (iii) rules for determining the appropriate law to apply for the resolution of the transferred proceedings.

APPENDIX B

COURT ORDER ENFORCEMENT ACT

R.S.B.C. 1979, c. 75

PART 2

Reciprocal Enforcement Of Court Orders

Interpretation

30. (1) In this Part

"judgment" means a judgment or order of a court in a civil proceeding, where money is made payable, and includes an award in an arbitration proceeding if the award, under the law in force in the state where it was made, has become enforceable in the same manner as a judgment given by a court in that state, but does not include an order for the periodical payment of money as alimony or as maintenance for a spouse or former spouse or reputed spouse or a child of any other dependant of the person against whom the order was made;

"judgment creditor" means the person by whom the judgment was obtained, and includes his executors, administrators, successors and assigns;

"judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the state in which it was given;

"original court" in relation to a judgment means the court by which the judgment was given;

"registering court" in relation to a judgment means the court in which the judgment is registered under this Part.

(2) All references in this Part to personal service mean actual delivery of the process, notice or other document, to be served, to the person to be served with it personally; and service shall not be held not to be personal service merely because the service is effected outside the state of the original court.

Application for registration of judgment

31. (1) Where a judgment has been given in a court in a reciprocating state, the judgment creditor may apply to the Supreme Court within 6 years after the date of the judgment to have the judgment registered in that court, and on application the court may order the judgment to be registered.

(2) An order for registration under this Part may be made *ex parte* in any case in which the judgment debtor

(a) was personally served with process in the original action; or

(b) though not personally served, appeared or defended, or attorned or otherwise submitted to the jurisdiction of the original court,

and in which, under the law in force in the state where the judgment was made, the time in which an appeal may be made against the judgment has expired and no appeal is pending or an appeal has been made and has been disposed of.

(3) In a case to which subsection (2) applies, the application shall be accompanied by a certificate issued from the original court and under its seal and signed by a judge or the clerk of it.

(4) The certificate shall be in the form set out in Schedule 2, or to the same effect, and shall set forth the particulars as to the matters mentioned in it.

(5) In a case to which subsection (2) does not apply, notice of the application for the order as is required by the rules or as the judge considers sufficient shall be given to the judgment debtor.

(6) No order for registration shall be made if the court to which application for registration is made is satisfied that

(a) the original court acted either

(i) without jurisdiction under the conflict of laws rules of the court to which application is made; or

(ii) without authority, under the law in force in the state where the judgment was made, to adjudicate concerning the cause of action or subject matter that resulted in the judgment or concerning the person of the judgment debtor;

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident in the state of the original court, did not voluntarily appear or otherwise submit during the proceedings to the jurisdiction of that court;

(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business in the state of that court or had agreed to submit to the jurisdiction of that court;

(d) the judgment was obtained by fraud;

(e) an appeal is pending or the time in which an appeal may be taken has not expired;

(f) the judgment was for a cause of action that for reasons of public policy or for some similar reason would not have been entertained by the registering court; or

(g) the judgment debtor would have a good defence if an action were brought on the judgment.

(7) Registration may be effected by filing the order and an exemplification or certified copy of the judgment with the registrar of the court in which the order was made, and the judgment shall be entered as a judgment of that court.

(8) Where a judgment provides for the payment of money and also contains provisions for other matters, the judgment may only be registered under this Part for the payment of money.

Jurisdiction to issue certificate

32. Where the original court is a court in the Province, that court has jurisdiction to issue a certificate for registration of a judgment in a reciprocating state.

Conversion to Canadian currency

33. Where a judgment sought to be registered under this Part makes payable money expressed in a currency other than the currency of Canada, the registrar shall determine the equivalent of that sum in the currency of Canada on the basis of the rate of exchange prevailing at the date of the judgment in the original court, as ascertained from any branch of any chartered bank; and the registrar shall certify on the order for registration the sum deter-

mined expressed in the currency of Canada; and, on its registration, the judgment shall be a judgment for the sum certified.

Where judgment in language other than English

34. Where a judgment sought to be registered under this Part is in a language other than the English language, the judgment or the exemplification or certified copy of it, as the case may be, shall have attached to it for this Part a translation in the English language approved by the court, and on approval being given the judgment shall be deemed to be in the English language.

Effect of registration

35. Where a judgment is registered under this Part,

(a) the judgment, from the date of the registration, is of the same force and effect as if it had been a judgment given originally in the registering court on the date of the registration, and proceedings may be taken on it accordingly, except that where the registration is made under an *ex parte* order, no sale or other disposition of any property of the judgment debtor shall be made under the judgment before the expiration of one month after the judgment debtor has had notice of the registration or a further period as the registering court may order;

(b) the registering court has the same control and jurisdiction over the judgment as it has over judgments given by itself; and

(c) the reasonable costs of and incidental to the registration of the judgment, including the costs of obtaining an exemplification or certified copy from the original court and of the application for registration, are recoverable in the same manner as if they were sums payable under the judgment if the costs are taxed by the proper officer of the registering court and his certificate is endorsed on the order for registration.

Order sought by one party only

36. (1) Where a judgment is registered under an order made *ex parte*

(a) within one month after the registration or within a further period as the registering court may at any time order, notice of the registration shall be served on the judgment debtor in the same manner as a writ of summons is required to be served; and

(b) the judgment debtor, within one month after he has had notice of the registration, may apply to the registering court to have the registration set aside.

(2) On such an application the court may set aside the registration on any of the grounds mentioned in section 31 (6) and on terms the court thinks fit.

Rules of court

37. Rules of court may be made for practice and procedure, including costs, in proceedings under this Part; and, until rules are made under this section, the rules of the registering court, including rules as to costs, apply with the necessary changes.

Exercise of powers

38. Subject to the Rules of Court, any of the powers conferred by this Part on a court may be exercised by that court.

Reciprocating jurisdictions

39. (1) Where the Lieutenant Governor in Council is satisfied that reciprocal provisions will be made by a state in or outside Canada for the enforcement of judgments given in the Province, he may by order declare it to be a reciprocating state for this Part.

(2) The Lieutenant Governor in Council may revoke an order made under subsection (1), and the state for which the order was made ceases to be a reciprocating state for this Part.

Saving

40. Nothing in this Part deprives a judgment creditor of the right to bring action on his judgment, or on the original cause of action,

(a) after proceedings have been taken under this Part; or

(b) instead of proceedings under this Part;

and the taking of proceedings under this Part, whether or not the judgment is registered, does not deprive a judgment creditor of the right to bring action on the judgment or on the original cause of action.

General purpose

41. This Part shall be interpreted so as to effect its general purpose of making uniform the law of the Provinces that enact it.

APPENDIX B

SCHEDULE 2

CERTIFICATE

CANADA: }
PROVINCE OF BRITISH COLUMBIA. }

It is certified that, among the records of the court of , at , before the Honourable , a justice [judge] of the court, in the Procedure Book there is record of an action, numbered as No. , between (plaintiff(s)) and (defendant(s)).

1. The writ of summons [*or* statement of claim, *as the case may be*] was issued on [*month, day*], 19 , and proof was furnished to this court that it was served on the defendant by delivery of a copy of it to him and leaving it with him.

2. No defence was entered, and the judgment was allowed by [proof, default *or* order]

[*Or*]

2. A defence was entered and judgment was allowed at the trial [*or as the case may be*]

3. Judgment was given on [*month, day*], 19

4. Time for appeal has expired and no appeal is pending [*or* an appeal against the judgment was made and was dismissed by the Court of Appeal and the time for any further appeal has expired and no further appeal is pending, *or as the case may be*].

5. Further details if any.

6. Particulars:

Claim as allowed	$	.....
Costs to judgment		.....
Subsequent costs		.....
Interest		.....
	$	
Paid on	$	.....
And the balance remaining due on the judgment for debt, interest and costs is		.....

IN TESTIMONY of which we have fixed the seal of the court at , [*month, day*], 19

[SEAL.] *A Justice [Judge] of the Court of*

Or

Clerk of the Court of

APPENDIX B

JURISDICTIONS DECLARED TO BE RECIPROCATING STATES FOR THE PURPOSES OF THIS ACT

[Printed for convenience: see *Court Order Enforcement Act*, Part 2 (section 39)]

North America:

in Canada:

- Alberta
- Manitoba
- New Brunswick
- Newfoundland
- Northwest Territories
- Nova Scotia
- Ontario
- Prince Edward Island
- Saskatchewan
- Yukon Territory

in the United States:

- Alaska
- California
- Colorado
- Idaho
- Oregon
- Washington

Europe:

Austria
Federal Republic of Germany (including Land Berlin)
United Kingdom

South Pacific:

in Australia:

- Australian Antarctic Territory
- Australian Capital Territory
- Coral Sea Islands Territory
- Heard and McDonald Islands Territory
- New South Wales
- Northern Territory of Australia
- Queensland
- South Australia
- Tasmania
- Territory of Ashmore and Cartier Islands
- Victoria

APPENDIX C

BRITISH COLUMBIA *RULES OF COURT*

RULES 13 AND 54

RULE 13

SERVICE OUTSIDE BRITISH COLUMBIA

Service outside British Columbia without order

(1) Service of an originating process or other document on a person outside British Columbia may be effected without order if

(a) the whole subject matter of the proceeding is land in British Columbia (with or without rents or profits), or the perpetuation of testimony relating to land in British Columbia,

(b) any act, deed, will, contract, obligation or liability affecting land or hereditaments in British Columbia is sought to be construed, rectified, set aside or enforced,

(c) it is sought to construe a will affecting personal property, if the testator was, at the time of his or her death, domiciled in British Columbia,

(d) relief is sought against a person domiciled or ordinarily resident in British Columbia,

(e) the proceeding is for the administration of the personal estate of a deceased person who, at the time of his or her death, was domiciled in British Columbia,

(f) the proceeding is for the execution (as to property in British Columbia) of a trust which ought to be executed according to the law in force in British Columbia and the person to be served is a trustee,

(g) the proceeding is in respect of a breach, committed in British Columbia, of a contract wherever made, even though the breach was preceded or accompanied by a breach, outside British Columbia, which rendered impossible the performance of the part of the contract that ought to have been performed in British Columbia,

(h) the proceeding is founded on a tort committed in British Columbia,

(i) an injunction is sought as to anything to be done in British Columbia, or a nuisance in British Columbia is sought to be prevented or removed, whether or not damages are also sought in addition,

(j) a person outside British Columbia is a necessary or proper party to a proceeding properly brought against some other person duly served in British Columbia,

(k) the proceeding is by a mortgagee or mortgagor in relation to a mortgage of property in British Columbia and seeks relief of the nature of sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance or delivery of possession by the mortgagee, whether or not the mortgagee seeks personal judgment or an order for payment of money due under the mortgage,

(l) the proceeding is brought by or on behalf of the Crown or a municipality to recover moneys owing for taxes or other debts due to the Crown or a municipality,

(m) the proceeding is founded upon a contract, or is in respect of a claim for alimony, and the defendant has assets in British Columbia,

(n) the action is brought under the *Carriage by Air Act* (Canada),

(o) the claim arises out of goods or merchandise sold or delivered in British Columbia,

(p) the proceeding is brought upon a foreign judgment and the defendant or respondent has assets in British Columbia, or

(q) the proceeding is a divorce, a matrimonial action or an adoption.

Idem

(2) Except in a divorce proceeding or a proceeding brought under subrule (3), a copy of an originating process served outside British Columbia without leave shall state specifically by endorsement in Form 6 upon which of the grounds referred to in subrule (1) it is claimed that service is permitted under this rule.

Application for leave to service outside the jurisdiction

(3) In any case not provided for in subrule (1), the court may grant leave to serve an originating process or other document outside British Columbia.

Idem

(4) An application for leave to serve a person outside British Columbia shall be made before the originating process or other document is served and shall be supported by an affidavit or other evidence showing in what place or country that person is or may probably be found, and the grounds upon which the application is made, and application may be made ex parte.

Service of order, etc.

(5) Copies of the application for leave to serve, of all affidavits in support of the application, and of the order granting leave to serve shall be served with the originating process or other document.

Time for appearance

(6) Where a person is served with an originating process outside British Columbia, the time for the appearance by that person, after service, shall be

(a) 21 days, in the case of a person residing anywhere within Canada,

(b) 28 days, in the case of a person residing in the United States of America, and

(c) 42 days, in the case of a person residing elsewhere.

The court may shorten the time for appearance on ex parte application.

Where service without leave valid

(7) This rule does not invalidate service outside British Columbia without leave of the court where the document could have been validly served apart from this rule.

Contract containing terms for service

(8) Notwithstanding this rule, the parties to a contract may agree
  (a) that the court will have jurisdiction to entertain a proceeding in respect of the contract, and
  (b) that service of a document in the proceeding may be effected at any place, within or outside British Columbia, on any party, or on any person on behalf of any party, or in a manner specified or indicated in the contract.

Idem

(9) Service of a document in accordance with an agreement referred to in subrule (8) is effective service, but no contractual stipulation as to service of a document shall invalidate service that would otherwise be effective under these rules.

Application to set aside

(10) Application may be made to set aside service of an originating process or other document served outside British Columbia without entering an appearance, and if it appears that service should not have been made outside British Columbia, the court may
  (a) set aside service of the originating process or other document and
  (b) order the person initiating the proceeding to pay the costs of the applicant as special costs.

Definition

(11) In subrules (12) to (14) "Convention" means the Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, signed at the Hague on November 15, 1965.

Manner of service abroad

(12) A document may be served outside British Columbia
  (a) in a manner provided by these rules for service in British Columbia,
  (b) in a manner provided by the law of the place where service is made if, by that manner of service, the document could reasonably be expected to come to the notice of the person to be served, or

(c) in a state that is a contracting state under the Convention, in a manner provided by or permitted under the Convention.

Proof of service abroad

(13) Service of a document outside British Columbia may be proved
(a) in a manner provided by these rules for proof of service in British Columbia,
(b) in the manner provided for proof of service by the law of the place where service was made regardless of the manner under subrule (12) by which service was effected, or
(c) in accordance with the Convention, if service was effected under subrule (12)(c).

Forms

(14) Where service is desired to be made in accordance with Article 5 of the Convention, Forms 104 and 105 shall be used.

Certificate

(15) Where an authority has, in accordance with Article 6 of the Convention, completed a certificate in Form 106, then the certificate is evidence of the facts stated in it.

RULE 54

FOREIGN JUDGMENTS

Definition of "convention"

(1) In this rule "convention" means the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, the English language version of which is set out in Schedule 4 of the *Court Order Enforcement Act*.

Application under Court Order Enforcement Act

(2) An application to have a foreign judgment registered under Part 2 of the *Court Order Enforcement Act* or under the convention, shall be made by originating application.

Affidavit in support

(3) The application for registration shall be supported by an affidavit
(a) exhibiting a certified copy of the judgment under the seal of the court where the judgment was obtained,
(b) exhibiting a certified translation of the judgment, if given in a language other than English, and
(c) stating, to the best of the information and belief of the deponent,

(i) that the judgment creditor is entitled to enforce the judgment,

(ii) that the judgment is not one which may not be registered under either section 31(6) of the *Court Order Enforcement Act* or Article II, paragraph 2 of the convention,

(iii) that the judgment debtor was duly served with the process of the original court, unless this appears from the judgment,

(iv) that the original court had jurisdiction to grant the judgment,

(v) the full name, trade or business, and usual or last known place of abode or of business of the judgment creditor and judgment debtor respectively, so far as is known to the deponent, and

(vi) the amount presently owing on the judgment.

Ex parte application

(4) Notice need not be given to the judgment debtor of an application under subrule (2).

Form of order to register

(5) The order giving leave to register the judgment shall be in Form 62.

Setting aside registration of judgment under convention

(6) An order that a foreign judgment be registered under the convention may be set aside where the court is satisfied that

(a) the judgment debtor, being the defendant in the original proceedings, either was not served with the process of the original court or did not receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and, in either case, did not appear,

(b) another judgment has been given by a court having jurisdiction in the matter in dispute before the date of judgment in the original court, or

(c) the judgment is not final, or an appeal is pending, or the time for appeal has not expired.

Stay of proceeding on foreign judgment

(7) A defendant in an action on a foreign judgment, on proof that an appeal or other proceeding in the nature of an appeal is pending, or the time for appeal has not expired, may apply for an order staying the proceeding until the determination of the appeal or other proceeding on terms that the court may impose.